



A MANUAL
OF THE
LAW AFFECTING VOTERS' LISTS,
FOR
PARLIAMENTARY AND MUNICIPAL
ELECTIONS ;
WITH
PRACTICAL SUGGESTIONS FOR THE REVISION OF
VOTERS' LISTS.

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"In the election of Members consists the exercise of the Democratical part of our Constitution ; for in a Democracy there can be no exercise of sovereignty but by Suffrage, which is the declaration of the people's will : in all Democracies, therefore, it is of the utmost importance to regulate by whom, and in what manner the Suffrages are to be given."
Plowden's Jura Anglorum.

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MANUAL ON VOTERS' LISTS.

An Act respecting Voters' Lists. (a)

REVISED STATUTES OF ONTARIO, CHAPTER 9.

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ALPHABETICAL LIST of Voters
to be made by Clerk of
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(a) The Election Act (R. S. O. c. 10) defines the statutory
qualifications necessary for the possession and exercise of the

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

Short title. 1. This Act may be cited as "*The Voters' Lists Act.*" (b)

franchise. This Act prescribes the method of ascertaining the names of all persons who possess that franchise, and of enrolling them in the capacity of qualified electors on the Voters' Lists.

(b) The legislation in regard to the revision of Voters' Lists may be traced as follows: The first enactment providing for such revision was contained in the English Reform Act of 1832 (2nd Wm. IV. c. 45). That Act required the overseers of the poor to prepare and publish lists of persons entitled to vote, together with the nature of the qualification, and that where any person should be entitled to vote in respect of real property, then, in counties, the local or other description of the lands, and, in cities, the name of the street, lane or other description of the place where such property might be situate, should be specified in the list. This list was subject to revision before a revising barrister; but such revision was not final. (Sec. 60.) The Registration Act of 1843 (6 Vic. c. 18) made further provisions respecting the list or register of voters, and enacted that, at every election, such register of voters should be conclusive evidence that the persons named therein continued to have at the time of such election the qualifications annexed to their names, subject to certain provisos; and as explanatory of the 60th section of the Reform Act provided that no Election Committee should inquire into the validity or invalidity of any vote, except when the vote had been "specially retained, or inserted, or expunged, or omitted from the register of voters by the express decision" of the revising barrister, or except where legal incapacity had arisen subsequent to the revision. (Sec. 98.) This Act may be called the "The Voters' List Finality Act" of England, and is still in force. In Canada the first Act providing for a list of voters, was passed in 1853 (16 Vic. c. 153). It provided (sec. 5, sub-sec. 2,) that the clerk of each municipality should, after the final revision and correction of the Assessment Rolls, forthwith make a correct alphabetical list of all persons entitled to vote at Parliamentary Elections within the municipality, according to the definitions in that Act, together with the number of the lot or part of a lot, or other description of of the real property in respect of which such persons were so qualified. In 1854 the operation of this Act was temporarily

2. The Clerk of each Municipality (c) shall, immediately

Clerk to make list of voters in three parts.

suspended (18 Vic. c. 7), and in 1855 it was repealed (18 Vic. c. 87.) In 1858 the provisions of the 16 Vic. c. 153 were re-enacted (22 Vic. c. 82, and amended by 22 Vic. c. 10, 1859), and the Assessment Roll was made final as to the right to vote. Since that period a system of registration of voters has been in operation, incorporated successively in the C. S. C. c. 6, and 32 Vic. c. 21, this latter Act repealing the finality clause in the former Act. The Voters' Lists Acts of 1874 (37 Vic. c. 4), and of 1876 (39 Vic. c. 11), introduced the system of a revision of the Voters' Lists by judicial authority, similar to that provided by the English Registration Acts, and in 1877, the principle of giving finality to such revision was again recognized by the Legislative Assembly, and in 1878 it was incorporated in the Voters' Lists Finality Act, 41 Vic. c. 21.

(c) The Clerk, although an officer of the Municipal Council, has, under the Act, public statutory duties to perform in addition to those required of him as an executive officer of the Council. The statutory duty of preparing a correct list of the qualified voters of his Municipality requires him to compile a careful and alphabetical collection and list of the names of the voters, together with a description of their properties and their assessed titles, as owners, tenants, occupants, income voters, or farmers' sons. In the performance of this duty the Clerk is not in any sense the servant or officer of the Council, but is an officer of the public, having a responsible and important duty to perform, the neglect of which subjects him to statutory penalties. And such penalties will be imposed not only for wilful but for inadvertent neglect. *King v. Burrell*, 12 A. & E. 460. The duty of the Clerk under this section is imperative: "shall immediately after," &c., "make a correct alphabetical list. The word 'shall' shall be construed as imperative (*Interpretation Act*, R. S. O. c. 1, s. 8, sub-s. 2). This list must be prepared and printed "within thirty days after the final revision and correction of the Assessment Roll." (See note (u) sub-s. 9 *post*.) The neglect of the Clerk is not to render "null, void or inoperative any of the lists in this Act mentioned" (sec. 23); but in case the Clerk fails to make out and publish the list, the Clerk of the Peace, or any elector, may apply summarily to the County Judge, and the Judge may make such orders as he deems necessary. (Sec. 24). He may also be liable to a forfeiture of his office, or to an application for a writ of mandamus. "If an officer acts contrary to the nature and duty of his office, or if he refuses to act at all, in these cases, the office is forfeited," *Bac. Abr. tit., "Offices and Officers," M.* "A general neglect or refusal to attend to

diately after the final revision and correction (d) of the assessment roll (e) in every year, make a correct

the duty of such an office is a reason of forfeiture, a determined neglect, a wilful refusal." *Per* Lord Mansfield, C. J., in *Rex v. Corporation of Wells*, 4 Burr. 2004; see also *Wildes v. Russell*, L. R. 1 C. P. 722. The writ of mandamus lies to command a public officer to discharge all the duties belonging, or annexed, to his office, *Rex v. Mayor of Gravesend*, 2 B. & C. 602; notwithstanding that he may be liable to a penalty for neglect. *Rex v. Everet*, Cas. Temp. Hard. 261. Thus where the overseers of one of several parishes in a borough omitted to make out the burgess list, and at the Revision Court of the Mayor, there was no list in which the name of the claimant for the parish appeared, a mandamus was granted. *Regina v. Mayor of Lichfield*, 1 Q. B. 453, s. c., 5 Jur. 889.

(d) "Final revision and correction of the Assessment Roll." See note (u) to sub-s. 9, *post*.

(e) The Assessment Roll when completed and finally revised and corrected is the foundation of all proceedings with a view to Parliamentary and Municipal elections, or Municipal taxation, and all copies and lists ought to correspond with it, for it is the primary or original roll. The duties of the several Municipal officers in preparing and finally revising the roll are prescribed by the *Assessment Act* (R. S. O. c. 180), as follows: (1) The assessor "shall begin to make his roll not later than the 15th February, and shall before completion serve a notice on every party assessed, and shall complete his roll before the 30th April" (s. 42), and "on or before the 1st May shall deliver to the clerk such Assessment Roll completed and added up." (S. 43). (2) Notice of appeal by any party complaining of assessments shall be given before the 15th May, or within fourteen days after the return of the roll in case the same is not returned within the statutory time. (S. 56, sub-s. 2). (3) The Court of Revision may meet after the 26th May (s. 52), and shall complete its final revision of the roll before the 1st July. (S. 56, sub-s. 19). (4) Notice of appeal to the County Judge, from the decision of the Court of Revision, shall be given by the 6th July. (S. 59, sub-s. 2). (5) The County Judge shall determine all appeals before the 1st August. If cities and separate towns pass by-laws under s. 44, then the assessment is to be made between the 1st July and the 30th September, and the roll is to be returned on the 1st October. The Court of Revision is to close its sittings on the 15th November, and the County Judge is to determine all appeals by the 31st December. County Councils may pass by-laws for taking the assessment between the 1st February and

alphabetical list (*f*) in three parts (*g*) (Form 1) of all Form 1. male persons (*h*) being of the full age of twenty-one years, (*i*) and subjects of Her Majesty by birth or

the 1st July, and the dates will then be regulated by such by-laws. See R. S. O. c. 180, s. 46.

(*f*) The object of the Voters' List is to furnish an official alphabetical register of all persons who are possessed of the requisite qualification as voters. It is to enable all persons interested in the election to have a check at hand in the time of polling the votes. *Regina ex rel. Dundas v. Niles*, 1 C. L. Ch. 198. And so that the voter may be easily identified when he tenders his vote at the polls. *Lincoln Election, (Berston's Case)* 2 App. R. "No person shall be admitted to vote unless his name appears on such list; and no question of qualification shall be raised at any election except to ascertain whether the person tendering his vote, is the same person intended to be designated in the said list." *Election Act*, R. S. O. c. 10, s. 73.

(*g*) See notes (*l*) (*m*) (*n*) (*o*) to sub-sections 2, 3, 4 and 5.

(*h*) Women are not entitled to vote at any Parliamentary election, R. S. O. c. 10, s. 6. In England it has been held that women being under legal incapacity have no common law right to vote. *Chorlton v. Lings*, L. R. 4 C. P. 374; *Wilson v. Township of Salford*, L. R. 4 C. P. 398. The same rule prevails in Scotland. *Brown v. Ingram*, 7 Sess. Cas. (3rd series) 281. "I trust the unanimous decision of the Scotch Judges, and our unanimous decision, will for ever exorcise and lay this ghost of a doubt which ought never to have made its appearance." Per Byles, J., in *Chorlton v. Lings, supra*. Nor in Municipal elections in England, are married women entitled to the franchise. *Regina v. Harrald*, L. R. 7 Q. B. 361. Only male persons can vote at Municipal elections here. (R. S. O. c. 174, s. 76). (See note (*o*) to 41 Vic. c. 21, s. 3, sub-s. 4, *post*.)

(*i*) The full age of twenty-one years is completed on the day preceding, the anniversary of a person's birth. *Anon*, 1 Salk. 44. A. was born on the 16th August, 1725, and died on the 15th August, 1746. *Held*, that he lived to attain the age of twenty-one years. *Toder v. Sansam*, 1 Brown's P. C. 468. If by the entry on the Assessment Roll under the heading "age of the assessed party," it appears that the person is not 21 years of age, the clerk cannot enter his name on the Voters' List; but such person, if he will attain the age of 21, within 60 days from the final revision and correction of the Assessment Roll, may apply to the Judge to have his name entered. (See s. 8, sub-s. 4, *post*.)

naturalization, (*j*) and appearing by the assessment roll to be entitled to vote (*k*) in the Municipality, prefixing

(*j*) These words, "subjects of Her Majesty by birth or naturalization," cannot be construed to give the Clerk jurisdiction to determine whether a particular person, entered upon the Assessment Roll, is an alien or a subject of Her Majesty. He must assume, for the purposes of the Voters' List, that all persons assessed thereon are British subjects, and must leave to the judicial proceedings before the County Judge the question of alienage or naturalization. The Clerk must accept the entries on the Assessment Roll, and where such Roll gives the statutory information which the Assessment Act requires, viz., the "name of the taxable party," by which the Clerk can ascertain the sex, or the "age of the assessed party," by which he can ascertain who are *minors*, he is bound to notice such entries, leaving the parties affected to appeal as they may be advised. But as there is no statutory provision giving the assessor, or the Court of Revision, jurisdiction to determine whether the assessed party is an alien or a subject, the Clerk, even if he finds the term "alien" or "foreigner," or "not a British subject," entered on the Roll, should not assume to determine the question of alienage or naturalization by omitting the name from the Voters' List,—the presumption of law being that "the resident and assessed inhabitants of this Province are British subjects." *Per* Robinson, C. J., in *Regina ex rel. Carroll v. Beckwith*, 1 Pr. R. 284. It may be here stated as an historical fact, only, in connection with this clause, that while the *Election Act* of 1877, (40 Vic. c. 10) was before the Legislative Assembly, it contained a clause directing the assessor to indicate on his roll all persons who were British subjects or aliens, by prefixing the letter B or A to their names; but the clause was struck out before the Bill passed, it having been urged that it was giving an unwarrantable power to an assessor to determine a mixed question of law and fact, against the ordinary presumption of law, and to determine that question *ex parte*. See Bills of 1877, No. 122.

(*k*) The right of voting in England, prior to the first statute regulating the franchise, (8 Henry VI. c. 8) was a common law right, and was free to all comers. "Every inhabitant and commoner in each County had a voice in the election of Knights before 8 H. 6, whether he were a freeholder or not."—Prynne's *Brevia Parliamentaria*, 187. "By the common law, all freemen of England had a voice in the election of these Knights within the counties where they dwelt."—Dalton's *Duty of Sheriffs*, 334. The term "freeman" is from *liber homo* in the statute of Merton, 20 Henry III. c. 10, and means "owner of land."—Wright's *Tenures*, 67. "For by the antient constitu-

to the name of each person his number upon the roll.
39 V. c. 11, s. 1; 40 V. c. 12, s. 4.

2. The first of the three parts (l) shall contain the names, in alphabetical order, of all male persons of full age and subjects as aforesaid, appearing by the assessment roll to be assessed for the real property or income requisite to entitle them to vote in the Municipality at both Municipal Elections and elections for members of the Legislative Assembly. 40 V. c. 12, s. 4. (a)

First part :
Parliamentary and
Municipal
Voters.

3. The second part (m) shall contain the names, in

Second part :
Municipal
Voters only.

tion, the elections were to be made by such persons only as were possessed of lands and tenements held by them as freeholds, or free burgage tenures."—*Lex Parliamentaria*, 5.

(l) The qualifications of persons to be entered in the first part (and not disqualified as defined in notes (m) and (n) post) are :—

I. *Real Property Franchise*. (1) Entry of name on the Assessment Roll; (2) as "Householder" or "Occupant;" "Freeholder" or "Owner"; or "Tenant" of real property; (3) of the assessed value of (a) in cities \$400, (b) in towns \$300, (c) in townships and villages \$200.

II. *Farmers' Sons Franchise*. (1) Entry of name on the Assessment Roll. (2) Being the son of the owner and actual occupant of a farm. (3) Assessment of such farm at an amount sufficient, is equally divided between owner and sons to give the statutory qualifications of \$200 to each. The assessed value of the farm is made the foundation of the right to vote.

III. *Income Franchise*. (1) Entry of name on the Assessment Roll. (2) Assessed by such roll for an income of not less than \$400.

In none of the above cases can the Clerk investigate the right of any person to be entered upon the Voters' List, outside of what appears properly recorded upon the Assessment Roll. In the preparation of this part, the Clerk must refer to the *Election Act*, s. 4, to ascertain whether any appear on the Assessment Roll under the column "occupation," as holding any of the disqualifying official positions mentioned in that section.

(m) The qualifications of persons to be entered on the second part are :—(1) Those who are entered upon the Assessment Roll for real property held in their own right or in the right of their wives, (R. S. O. c. 174, s. 76) of the actual value of

alphabetical order, of all other male persons of full age and subjects as aforesaid, appearing by the assessment roll to be entitled to vote in the Municipality at Municipal Elections only, and not at elections for members of the Legislative Assembly. 40 V. c. 12, s. 4. (b)

Third part:
Parliamentary Voters
only.

4. The third part (n) shall contain the names, in alphabetical order, of all other male persons, of full age and subjects as aforesaid, appearing by the assessment roll to be entitled to vote in the Municipality at elections for members of the Legislative Assembly only, and not at Municipal Elections. 40 V. c. 12, s. 4. (c)

Lists for
polling sub-
divisions.

5. Where a Municipality is divided into polling subdivisions the list (to be made in three parts as aforesaid) shall be made for each of such subdivisions. (o) 39 V. c. 11, s. 1 (2); 40 V. c. 12, s. 5.

\$100, and not entered on part I., (*Ibid.* s. 77); and (2) those who possess the qualifications for the Municipal Franchise, but are disqualified from voting at Parliamentary elections by the *Election Act*, such as Judges of the Superior and County Courts, Officers of Customs, Clerks of the Peace, County Attorneys, Registrars, Sheriffs, Deputy Sheriff, Deputy Clerks of the Crown, Crown Land Agents, Postmasters in Cities and Towns, and Excise or Inland Revenue Officers, (R. S. O. c. 10, s. 4). (3) Farmers sons, as defined under part I, where the amount of the assessment of taxes, if equally divided between father and sons, would give the municipal qualification of \$100 to each, and not entered in part I.

(n) The third part is to contain the names of those who possess the qualifications defined in note (l) *ante*, but who lose their Municipal franchise in Municipalities where by-laws have been passed under the *Municipal Act*, (R. S. O. c. 174, s. 461, sub-s. 2) disqualifying electors for non-payment of taxes, when the Voters' List is prepared after the date mentioned in the by-law; and (2) those who have been adjudged guilty of bribery or undue influence at Municipal elections. (*Ibid.* s. 206); (3) the Clerk of the Municipality (*Ibid.* s. 152, sub-s. 2.)

(o) Where the Township is divided into Municipal Wards, and also into polling sub-divisions for Parliamentary Elections, —the boundaries of the wards not being the same as the

6. If the qualification of any such person is in respect of real property, the Clerk shall, opposite the name of the person, insert, in the proper column of the voters' list, the number of the lot or other proper description of the real property in respect of which each person is so qualified; (p) and in the case of the person being a

Real pro-
perty to be
named in the
list.

boundaries of the polling sub-divisions—the duty of the Clerk is to follow the directions of this Act, viz., to make the lists according to the boundaries of the polling sub-divisions, and not of the Township Wards. But as the second part of the list includes only Municipal Electors, it would not be held to be a breach of duty, if the Clerk, in making out such list, recognized the boundaries of the wards. But in no case should he duplicate the names on the list according to the ward, and also according to the polling sub-division boundaries, of the Township.

(p) It must appear on the Assessment Roll by what title the voter claims the franchise, whether for real property (F. H. T.), or income, or as a farmer's son. (F. S.) For "the number of the lot or other proper description of the real property," the Clerk must look to the Assessment Roll alone. The Assessor in preparing his roll is required (R. S. O. c. 180, s. 12), "after diligent enquiry," to set down "according to the best information to be had," "the number of concession, name of street, or other designation of the local division in which the real property lies," "number of lot, house, &c., in such division." The English Registration of Voters' Act (6 Vic. c. 18, s. 101), requires that "the person, place or thing shall be denominated in such schedule, list, register or notice as commonly understood." The words "commonly understood" would seem to imply some clumsy description, which, though inaccurate, sufficiently points to the house or other thing described. *Flanders v. Donner*, 2 C. B. 63. As where a person describes a parish by a popular name, or where part of a name is omitted. *Ebsworth v. Farrer*, 4 C. B. 9. "The Rate Roll must specify the description of property in respect of which the occupier is rated,—house or land, or something by which it may be ascertained whether he is properly rated." *Per Abbott, C. J., Rex v. Aire and Calder Navigation Company*, 4 D. & R. 253, s. c., 2 B. & C. 243. "The Court has never decided that the omission of the property makes the rate illegal, though it pointed out (in *Rex v. Aire, &c., supra*), as a cause of appeal, it would be a ground for quashing the rate." "It is liable to be quashed, but if no objection is taken, such a rate is good and legal." *Per Bayley, J., in Rex v. Bromyard*, 2 M. & R. 283, s. c., 8

Rev. Stat. c. farmer's son within the meaning of "*The Election Act*"
10 and c. 174. and "*The Municipal Act*," the Clerk shall also, in the
proper column of the voters' list, state that fact and the

B. & C. 242. The direction in the form appears to intend that if a house be in a street, lane, or other like place in the parish, the street or lane shall be mentioned; and that if the houses be numbered the number also shall be given; but that if the house and premises be not in a street or lane, or other like place, but on a road or on a common, or the like, then the name of the property shall be given, if known by any, or the name of the occupying tenant. *Ekersley v. Barker*, 7 M. & Gr. 76, s. c., 8 Scott N. R. 899. It is a question of fact for the revising barrister whether the nature or description of the qualification is sufficiently described for the purpose of being identified. *Wood v. Willesden*, 2 C. B. 15. The voter was described as of "The Grove, Neasdon." It was shewn that "Neasdon" was not a street, lane, or like place, and that the property was not situate in any street, lane, or like place, but was known by the above name; held sufficient. *Ibid.* "Poplar Grove, Didsbury," a sufficient description, without stating where Didsbury was situated. *Gadsby v. Warburton*, 7 M. & Gr. 11. The object is to give reasonable information where the party is to be found. *Ibid.* The property was described as "building and land, Rushbrooke," without saying where Rushbrooke was. It was argued that "it was not even stated to be in England," to which Maule, J., replied: "It is not even stated to be in Europe;" but the objection was overruled. *Nunn v. Denton*, 7 M. & Gr. 70. So "House and shop High street" is sufficient. *Daniel v. Camplin*, 7 M. & Gr. 167. "Part of a house" is a good description of the nature of the qualification. *Judson v. Luckett*, 2 C. B. 197. The property occupied by the voter consisted of a farm-house and some land at some distance from the farm in the same Township. The farm was known by no particular name, but the whole property was entered opposite the voter's name as "Brock lane and elsewhere in Thornton." Held, sufficient. *Birks v. Allison*, (*Dixon's Case*), 13 C. B. N. S. 24. Ambiguity in the description of the qualification as "Leasehold, house and garden," held, not invalid. *Jones v. Jones*, L. R. 4 C. P. 422. If a person be duly assessed for a named property on the roll, even although there may be a clerical error in describing the property on the Voters' List, or in erroneously setting down another property on the Voters' List, if no question or difficulty arose at the poll as to taking the oath, the vote will not be struck off. *Brockville Election*, 7 C. L. J. N. S. 221. "The primary object of instituting the lists was to secure greater efficiency and convenience in conducting the elections."

place at which the voter resides (g) in the Municipality. 39 V. c. 11, s. 1 (3); 40 V. c. 9, s. 4. *part.*

7. If the qualification is in respect of income, the Clerk shall, in the proper column of the voters' list, state that fact and the place at which the voter resides (r) in the Municipality. 39 V. c. 11, s. 1. (4)

Income to be named on list.

8. Wherever it appears by the assessment roll that any person is assessed for property within the Municipality sufficient to entitle him to vote, but that it lies partly within the limits of one of such subdivisions and partly within another or others, the Clerk shall enter his name on the list of voters in each or every subdivision in which any part of such property is situate,

Provision when property partly in one subdivision and partly in another.

"To this end it was absolutely essential that the alphabetical list should contain the name of every person entitled to vote. It was expedient, but not essential, that it should comprise a description of his real property for the purposes of identification, which was the only question of qualification which could be raised at the election." *Per Moss, C. J. A., Lincoln Election, 2 App R.*

(g) "Residence" is where one habitually sleeps. *Regina v. Norwood, L. R. 2 Q. B. 457; Oldham Election (Baxter's Case), 1 O. & H. 158.* Where a man establishes his abode and makes the seat of his property. *Chase v. Miller, 41 Penn. St. 403.* An inhabitant of a place is one who makes it his place of abode, his dwelling place; he must reside there; and to qualify him as a householder, the residence must have been continuous. Any breach of residence, even for a single day, will disqualify. *Cox & Grady On Registration and Elections, p. xxi.* It is for the Judge to say whether the evidence shews a certain place to be the house of the voter. *Oldham Election, 1 O. & H. 157-6; Northallerton Election, Ibid., 170-1.* A farmer's son, when required at the election, must swear that he has resided on the father's or mother's or stepfather's farm for twelve months prior to the date of the return, or of the final revision of the roll (see note (e), ante), and that he is still a resident of the electoral district.

(r) Income voters, when required at the election, must swear that at the date of the final revision of the roll, they were, and thenceforward have been continuously, and are still, residents of the local municipality in which they are assessed and vote.

with the following words added: "*See subdivision No. .*" (s) 39 V. c. 11, s. 1 (5). *See* 32 V. c. 21, s. 27.

(s) This would seem to provide that where a person is assessed "within a municipality" for a number of small lots in different wards or polling sub-divisions, he may have the values of these lots added together; and if the total assessment is "sufficient to entitle him to vote," the Clerk shall enter his name on the list of voters. But such person shall not vote at more than one polling place under a penalty of \$100. (R. S. O. c. 10, s. 86.) The *Election Act* and this Act recognize only Municipal boundaries, not ward or polling subdivision boundaries, within which the property assessed must be situated. By the English Act, (2nd Wm. IV. c. 45), the Returning Officer was required to provide sufficient booths for polling the votes, and it was provided that no person should be admitted to vote at any election except at the booth allotted for the parish district or part wherein the property may be situate, in respect of which he claimed to vote. A voter voted at booth E instead of booth C, where he ought to have voted, *held*, that though the voter voted at the wrong polling booth, his vote was not invalidated. *Cambridge Election (Amey's Case)*, Wolf. & Dew 54. A voter was objected to as not being duly assessed, and as having no freehold in the place (Edmonton), where he polled his vote. It was proved that he possessed the requisite qualification in Hackney, which had a separate polling booth. *Held*, that although the voter had been admitted to vote at the wrong booth he did not thereby lose his vote. *Middlesex Election (Baker's Case)*, 2 Peck. 57. The sheriff did not divide the burgh into districts as required by statute, nor did he assign the persons being voters living within particular portions of each ward, to each new polling place, but he divided the entire list of voters in each ward, alphabetically, and allotted one portion of the alphabet to one polling place, and so on. There was no evidence to shew that the *fairness of the result* was affected by the arrangements made: *Held*, that these irregularities did not avoid the election. *Greenock Election*, 1 O. & H. 249. It appeared that there were two "James Scholefields" in the borough. No. 1 tendered his vote at the right booth for the respondent, but he was told he had voted before, No. 2 having previously voted there, although it was not the right booth for his vote. No. 2 voted for the opposing candidates, C. & S. Blackburn, J.—"I hardly think this comes within the *Cambridge Case* (W. & D. 54). It simply comes to this, the Poll Clerk should have refused the vote, and the voter should have gone to the proper booth. It is not at all an intentional mistake, it was the fault of the voter as well as

9. An assessment roll shall be understood to be finally revised and corrected, (t) when it has been so revised and corrected by the Court of Revision for the Municipality, or by the Judge of the County Court, in case of an appeal, as provided in "*The Assessment Act*," or when the time during which such appeal may be made has elapsed, and not before. (u) 39 V. c. 11, s. 1 (6); 40 V. c. 11, s. 12 (4).

When assessment roll to be regarded as finally revised.

Rev. Stat. c. 180.

the Poll Clerk. I shall at present strike off the vote for C. & S., but should this one vote turn the scale, I will reserve the point for the Court of Common Pleas." *Oldham Election (Scholefield's Case)*, 1 O. & H. 163. A voter voted at polling sub-division 5, where by the Assessment Roll the property on which he voted was situated. His name was not entered on the Voters' List for No. 5, but for No. 4: *Held*, that his vote was good, and he should not be disfranchised because a mistake was made. *Brockville Election*, 7 C. L. J. N. S. 221, *per* Hagarty, C. J.

(t) This provision was first enacted in 1853, (16 Vic. c. 153, s. 11) but was repealed in 1855 by 18 Vic. c. 87. It was re-enacted in 1858 by 22 Vic. c. 82, with the addition that the decision of the County Judge on any cases decided by him under the Assessment Act should be final and binding on Parliamentary Committees. In the consolidation of the statutes, this latter provision was altered so as to make the Assessment Roll, when revised and corrected, final and binding on Parliamentary Committees. C. S. C. c. 6, s. 6, sub-s. 6. In 1869 the clause was re-enacted in 31 Vic. c. 21, but without the provision as to finality of the Assessment Roll or Voters' List. In 1878 this principle of finality was incorporated in the Voters' List Finality Act. (41 Vic. c. 21). The revised Assessment Roll was held to be binding on Election Committees in Controverted Election cases, as to the right to vote and the value of the property assessed. *West Elgin Election*, 9 U. C. L. J. 330. And to be binding on the Courts in similar election cases as to the amount or value of the property assessed, but not as to the right to vote. *Stormont Election*, 7 C. L. J. N. S. 213; *North Victoria Election*, 10 C. L. J. N. S. 217. And to be conclusive as to the qualification of Municipal electors. *Regina ex rel. Chambers v. Allison*, 1 C. L. J. N. S. 244; *Regina ex rel. Ford v. Cottingham*, *Ibid.* 214.

(u) It is important in interpreting this sub-section, to keep in mind the respective proceedings before the Court of Revision, and the County Judge. The Court of Revision is required to meet and finally pass the roll, whether complaints are made

Copies of list
to be printed.

3. Immediately after the Clerk has made the said alphabetical list, and within thirty days (v) after the

against the roll, or not. But the County Judge has no jurisdiction to revise or correct the roll, unless there has been (1) a complaint or appeal presented to the Court of Revision, and (2) a "decision of," or an "omission, neglect, or refusal, to hear, or decide an appeal" by the Court of Revision. (R. S. O. c. 180, s. 59). The dates at which the Assessment Roll "shall be understood to be finally revised and corrected," will therefore vary according as to whether any proceedings by way of complaint or appeal have, or have not, been taken before the Court of Revision or County Judge. The dates may be determined by the following rules:—

(1) *If there has been no complaint or appeal to the Court of Revision*, then, on such day after the 26th May, as the roll is finally passed by the Court of Revision, and certified by the Clerk as passed. (R. S. O. c. 180, s. 57).

(2) *If there has been a complaint or appeal to the Court of Revision, and no appeal to the County Judge*, then when the time (five days after the first day of July) during which such appeal may be made has elapsed and not before, viz., on the 7th July. (*Ibid.* s. 59, sub-s. 2.)

(3) *If there has been an appeal to the County Judge*, then on such day prior to the 1st August, as "the decision of the Judge" is given on the appeals. (*Ibid.* s. 60).

These dates are most important to be noted, for the Clerk is required by the *Election Act*, (R. S. O. c. 10, s. 71) to give to each Deputy Returning Officer a certificate of the day on which the Assessment Roll was returned by the assessor—by which the right of a farmer's son to vote is to be determined,—and of the day on which such roll was finally revised and corrected,—by which the rights of voters in respect of real property and income are to be determined. "Such certificate shall determine the dates to be inserted in the oaths to voters at the polls." As this certificate is of so much importance in fixing the time at which the Parliamentary Franchise is retained or lost, the Clerk is bound to see that in giving it he fixes the date in accordance with the rules laid down in the statute. The date will vary in the several Municipalities of the Electoral Division according to whether appeals have or have not been made to the Court of Revision, or County Judge.

(v) From note (u) to the preceding section it will be seen how the "thirty days after the final revision and correction of the Assessment Roll" may be computed. Under rule (1) it will be thirty days after the day on which the roll is finally passed by

final revision and correction of the assessment roll, the Clerk (*w*) shall cause at least two hundred copies of said list to be printed (*x*) (in pamphlet form where practicable), and forthwith shall cause (*y*) one of such printed copies to be posted up, and to be kept posted up in some conspicuous place in his own office, and deliver or transmit by post, by registered letter, or by parcel or book post, registered, (*z*) three of such copies

Copies to be posted in clerk's office, and copies to be sent to certain officials.

the Court of Revision. Under rule (2) it will be the 6th August. Under rule (3) it will be thirty days after the day on which the County Judge gives his decision in the appeals.

(*w*) The failure of the clerk to perform the duties prescribed by the Act within the times appointed, is not to render null, void or inoperative any of the lists in the Act mentioned. (S. 23, *post*.) The English Registration Act (6 Vic. c. 18, s. 26) provides that the list shall not be invalidated by imperfect publication as to name or place, and the revising barrister is to proceed on any list published for any part or the prescribed time; but the overseers and clerks are to be liable to the penalties for neglect or wilful default. See *Mather v. Overseers of Aliandale*, L. R. 6 C. P. 272.

(*z*) Where the overseers in preparing the lists for publication placed the name of C., a voter, under the proper heading, but the printer by mistake inserted on the sheet which commenced with C.'s name a heading applicable to another list, and the overseers published the list as printed, with the error, the revising barrister decided that there had not been a publication of the proper list, and expunged the name of C. and all the names which followed his under the wrong heading. *Held*, reversing the decision of the revising barrister, that there had been a sufficient publication of the list, and that the votes should have been retained. *Mather v. Overseers of Allandale*, L. R. 6 C. P. 272.

(*y*) The duty of the Clerk, after the printing of the lists, is:

(1) To post up and to keep posted up in his office one printed copy.

(2) To deliver or transmit by post (registered) to certain official persons, two, three, or ten copies each, with certificate.

(3) To publish in some newspaper within or next the Municipality, or in the County Town, a notice stating that he has transmitted the copies, and mentioning the date of the first posting of the list in his office.

(*z*) This provision "to transmit by post by registered letter,

to each Judge of the County Court of the County to which for judicial purposes the Municipality belongs; and two copies to each of the following persons, that is to say:—

- a. Every member of the Municipal Council of the Municipality except the Reeve;
- b. The Treasurer thereof;
- c. The Sheriff of the County;
- d. The Clerk of the Peace;
- e. Every Postmaster in the Municipality;
- f. Every Head Master or Mistress of a Public or Separate School in the Municipality. 39 V. c. 11, s. 2.

Clerk of the
municipality
to transmit
copies to cer-
tain persons.

4. The Clerk of the Municipality shall forthwith also deliver or transmit by post, by registered letter, or by parcel or book post, registered, ten of such copies to each of the following persons, that is to say:—

or by parcel or book post, registered," is similar to the provisions of s. 100 of the English Act, respecting notices of objection to votes. All that the Legislature requires (by that Act) is that the party should deliver the notice at the proper office within the proper hour, and that he should pay the proper fees for its registration, and wait for, and receive back, one of the duplicates stamped with the post office stamp. *Allan v. Waterhouse*, 1 Lutw. 92, s. c., 13 L. J. C. P. 129. It appeared that the notices were duly posted on such a day as was sufficient for them to have reached their destination within the time required by the statute, but from some neglect in the post office they did not reach their destination until after that time: *Held*, that the service was sufficient. *Bayley v. Overseers of Nantwich*, 2 C. B. 118. So although the notice was not delivered by the post office authorities. *Bishop v. Helps*, 2 C. B. 45. A person putting into the post office a letter properly directed has done all that is necessary for him to do, and is not answerable for casualities occurring in the post office. *Dunlop v. Higgins*, 1 H. Lds. Cas. 381; *Harris's Case*, L. R. 7 Ch. App. 569; *Johnston v. Provincial Insurance Company*, 27 C. P. 464; *Shannon v. Hastings Mutual Insurance Company*, 2 App. R. 81. *Sed contra British and American Telegraph Company v. Colson*, L. R. 6 Ex. 114; *McCann v. Waterloo County Fire Insurance Company*, 34 Q. B. 376.

a. The Member of the House of Commons for the The M. P. Electoral District in which the Municipality or any part thereof lies ;

b. The Member of the Legislative Assembly for the The M. P. P. Electoral District in which the Municipality or any part thereof lies ;

c. Every candidate for whom votes were given at the Candidates. then last election of a member for the House of Commons and for the Legislative Assembly respectively ; and

d. The Reeve of the Municipality. 39 V. c. 11, s. 2. Reeve.

5. Upon each of the copies so sent to each person shall be a printed or written certificate (Form 2) over the name of the Clerk, (a) stating that such list is a correct list of all persons appearing by the last revised assessment roll of the Municipality to be entitled to vote at elections for members of the Legislative Assembly ; (b) and further calling upon all electors to

On each copy the clerk to certify as to certain matters. Form 2.

(a) One S., the Clerk of a Municipality, duly prepared the alphabetical lists, had them printed with the proper certificate over his name, and ready for transmission at a date mentioned in the printed certificate. Before that date arrived, he died, and a new Clerk was appointed, who, finding the lists prepared and printed, posted one copy in his office, and transmitted the copies to the official persons mentioned in the Act. Complaints were lodged within the prescribed time, but objection was made that the County Judge had no jurisdiction owing to the notices not having been signed or given by the new Clerk. The County Judge overruled the objection ; and, on an application for a writ of prohibition, *held*, that the provisions respecting the duties of the Clerk, &c., were directory, and that as the object of the statute was fulfilled to all intents and purposes, the lists were properly before the County Judge, and he had jurisdiction to revise them. *Re Goderich Voters' Lists of 1874*, 6 Pr. R. 213. The object of having the Clerk's name to the lists is to authenticate them as coming from the Clerk's office. *Ibid*. The provision in the statute requiring the signature of the officers is only directory, and a list not so signed is not invalid. *Morgan v. Perry*, 17 C. B. 334.

(b) Where a statute provides that a thing is to be done at a certain time and in a certain way, the statute ought to be

examine the said list, and, if any omissions or other errors are perceived therein, to take immediate proceedings to have the said errors corrected according to law. 39 V. c. 11, s. 2; 40 V. c. 10, s. 3.

Sheriff, clerk of the peace, teacher and postmaster to post up a copy.

6. The Sheriff shall immediately upon the receipt of his copies cause one of them to be posted up in a conspicuous place in the Court House; the Clerk of the Peace, upon receipt of his copies, shall cause one of them to be posted in a conspicuous place in his office; every Public or Separate School Head Master or Mistress shall, in like manner, post up one of his or her copies on the door of the school-house; and every Postmaster shall post up one of his copies in the post office. (c) 39 V. c. 11, s. 2.

Clerk to publish notice of first posting up by him.

7. The Clerk shall also forthwith (d) cause to be inserted in some newspaper published in the Municipality, or in case no newspaper is published in the Municipality, then in some newspaper published in the Municipality next

strictly followed. The notice here provided for, is to warn the electors interested that the lists are posted, and that the time within which complaints are to be made, can be ascertained either at the Clerk's office, or from the notice in the newspaper, stating the date of the first posting up of the list in the Clerk's office.

(c) The English Registration Act (6 Vic. c. 18, s. 23) requires the notices to be affixed in some conspicuous situation on the outer door or outer wall, near the the door of every church, public chapel, and town hall, and (s. 24) to continue posted thereon for at least two consecutive Sundays.

(d) The terms "forthwith" and "immediately" should always receive a reasonable construction. They should, in general, be construed to mean as soon as can reasonably be done. *Regina v. Robinson*, 4 P. & D. 391; *Thompson v. Gibson*, 8 M. & W. 281. They mean a reasonable time. *Doe v. Sutton*, 9 C. & P. 706. When no time is expressly mentioned for the performance of an act, the law considers it shall take place within a reasonable time. *Greaves v. Ashlin*, 3 Camp. 426; *Ellis v. Thompson*, 3 M. & W. 445. A question of reasonable time for the performance of an act, is a question of fact and not of law. *Startup v. Macdonald*, 2 M. & Gr. 395.

thereto, or in the County Town, a notice (Form 3), Form 3. signed by him, which shall state that he has delivered or transmitted the copies of said list as directed by this Act, and shall also mention the date of the first posting Date of posting lists. up of said list in his office. (e) One insertion of such notice shall be sufficient. 39 V. c. 11, s. 3; 40 V. c. 10, s. 2.

8. The said list of voters shall be subject to Revision of list by County Judge. revision (f) by the County Judge, at the instance of any voter (g) or person entitled to be a

(e) This notice is perhaps of more importance than the printing and distribution of the Voters' Lists, for it is the only public notification of the date, from which the right of appeal commences to run. The neglect of the Clerk to give this notice may deprive the parties concerned of their right to object to the lists. Where in cases of appeals to the Court of Revision, the Clerk was required by the statute to serve notices of appeals "at least six days before the sitting of the Court," which he neglected to do, and the Court of Revision refused to hear the appeals; a mandamus to the Court of Revision to compel them to hear and determine the matters was refused. *Regina v. Court of Revision of Cornwall*, 25 Q. B. 286. But see R. S. O. c. 180, s. 58, sub. 4, and note (d) page 29, *post*.

(f) It is essential to the validity of an election, that the parties named on the Voters' List, and voting at the election, should possess the proper Parliamentary Franchise, in the Electoral Districts concerned; and that result can only be arrived at by a careful and exhaustive examination of the Voters' List, after it has been published by the Clerk under this Act. Every facility is provided for obtaining printed copies of the proposed list, and sufficient time is given (30 days), after the posting of the lists, for a careful investigation of every vote which may be gained, or lost, by entry on, or omission from, the list, preparatory to the election contest. And this examination is now all the more important, and will demand so much more care and thought, for the purposes of claim or objection, as the Voters' Lists to be used at elections hereafter are, by the "Voters' Lists Finality Act" of 1878, to be "final and conclusive evidence of the right of all persons named therein to vote at any election," except as to disqualifications arising subsequent to the revision by the County Judge, or under ss. 4, 5, and 6 of the *Election Act*.

(g) "Voter." In the English Corrupt Practices Act of 1854 the word "voter" is defined to mean "any person who has, or

**Grounds of
complaint.**

Voters:

- (1) omitted;
(2) wrongly
named;

voter (*h*) in the Municipality for which the list is made, or in the Electoral District in which the Municipality is situate, (*i*) on the ground (*j*) of the names of voters being omitted from the list, (*k*) or being

claims to have a right to vote in the election of a member to serve in Parliament."

(*h*) "A person entitled to be a voter," may be a person having so much of the statutory qualification as gives him the right to have his name entered on the Assessment Roll, and Voters' List; or, if on the Assessment Roll, to have his name entered on the Voters' List. The County Judge has the right to examine and decide whether the person making complaint of errors and omissions in the list of voters is "a voter or person entitled to be a voter," although such complainant may appear on the roll as duly qualified, and his vote is not appealed against, and such decision cannot be reviewed. *Re Parsons and Toms, and the Voters' List of Goderich*, 36 Q. B. 88. "Had the Legislature meant that the fact of being on the Voters' List, entitled a person to be a complainant, it would have been easy so to have enacted. When they speak of 'a voter or person entitled to be a voter,' they mean something beyond the mere being on the list." *Per* Hagarty, C. J., *Ibid.* But see *Smith v. James*, L. R. 1 C. P. 138.

(*i*) "In the Municipality for which the list is made, or in the electoral district in which the Municipality is situate." This would seem to qualify as a complainant any "voter or person claiming to be a voter" in any Municipality within the electoral district; but it would be more convenient that the complainant should be a resident voter in the Municipality concerned.

(*j*) The grounds of complaint (in addition to the specific grounds set out in sub-sections 3, 4 and 5) are:—

- (1) That the names of *voters* are omitted from the list.
- (2) That the names of *voters* are wrongly stated on the list.
- (3) That the names of *persons* are inserted on the list who are not entitled to vote.
- (4) That the names of *persons* are entered on the list who are disqualified or incompetent to vote under the *Election Act*.
- (*k*) The *first* ground of complaint may include the following classes of cases:—
 - (1) Those owners, tenants, or occupants, or farmers' sons who were interested in real property at the time of making out

wrongly stated therein, (l) or of names of persons (3) not entitled to vote; (m) and upon such revision, the assessment roll

the roll, and who retained that interest at the date of the final revision of the roll, but whose names are omitted from the Assessment Roll and Voters' List.

(2) Those owners, tenants, or occupants, or farmers' sons, omitted from the Voters' List by reason of the real property on which they claim the right to vote, being not assessed to a sufficient amount to give the Parliamentary, (see note (l), p. 17 ante,) or Municipal qualification. (See note (m), p. 7 ante.)

(3) Those owners, tenants, or occupants who acquired their interest in the real property between the date of the making up of the roll by the Assessor and the date of the final revision of the roll. (See note (u), p. 13, ante.)

(4) Farmers' sons who have resided on the farm of their father, mother, or stepfather, for twelve months prior to the return of the Assessment Roll, and who are entitled to vote at Parliamentary (see note (l), p. 7, ante), and Municipal Elections. (See note (m), p. 7, ante.)

(5) Income voters whose names are entered on the Assessment Roll, and are assessed thereby for income over \$400. But if the income voter is not entered on the Assessment Roll for income, the County Judge cannot add his name to either the Assessment Roll or Voters' List. *Lincoln Election, (Borrowman's Case)*, 2 App. R.

(6) Any person whose disqualification under the *Election Act* (s. 4) was removed prior to the date of the final revision of the roll, or of the notice of complaint.

(l) The second ground of complaint will include misnomers in name, or misdescriptions of title or locality of property, or of the sub-division where such property is situated. Misnomers are questions of fact as whether a person, place or thing is so denominated as to be commonly understood. *Hinton v. Hinton*, 14 L. J. C. P. 58. Where the surnames were correct, although the Christian names were erroneous, *Held*, votes good. *Regina ex rel. Chambers v. Allison*, 1 C. L. J. N. S. 244. Thus *Wilson Wilson* for *William Wilson*, *Simond Faulkner* for *Alexander Faulkner*. *Thomas Sanderson* was held *idem sonans* with *Thomas Anderson*, so as to entitle the person bearing the latter name to vote. *Ibid*. See also *Oldham Election, (Brown's Case)*, 1 O. & H. 152, (*Horsfall's Case*,) *Ibid* 153. *Sed contra, Phayre v. McDonel*, 1 Irish L. R. N. S. 470.

Assessment Roll not to be conclusive evidence.

shall not be conclusive evidence in regard to any particular, whether the matter on which the right to vote depends had or had not been brought before the Court of Revision, or had or had not been determined by that Court; (n) and the decision of the Judge under this

(m) The *third* ground of complaint will include the following classes of cases:—

(1) Persons who have died prior to the service of the notice of complaint. (Form 6.)

(2) Persons who had ceased to be owners, tenants, or occupants of the assessed property prior to the date of the final revision of the Assessment Roll. See note (u), p. 13, *ante*.

(3) Farmers' sons whose father, mother, or stepfather, had ceased to be the owner and actual occupant of the assessed property, prior to the final revision of the Assessment Roll.

(4) Farmers' sons whose father, mother, or stepfather, was not the owner and actual occupant of the assessed property.

(5) Farmers' sons who had not resided on the farm of their father, or mother, or stepfather, for twelve months prior to the return of the Assessment Roll. (1st May or such date as the Assessor has actually returned the Roll to the Clerk.)

(6) Persons whose property has been assessed too high, for the purpose of giving to them, or, with them, to any joint owners, tenants, or occupants, or farmers' sons, the statutory qualification for the Parliamentary or Municipal franchise.

(7) Persons owning or occupying, jointly with others, the assessed property (whether the names of such others do or do not appear on the Assessment Roll), and by reason thereof, the property is not rated at an amount sufficient, if equally divided between all the parties so jointly interested, to give the statutory qualification to each.

(8) Income voters who were not, at the date of the final revision of the roll, residents of the Municipality.

(9) Income voters who were not, at the date of the final revision of the roll, and for twelve months previously, in receipt of an income from some trade, office, or profession of not less than \$400.

(10) Persons under the age of twenty-one years; (subject, however, to the provisions of sub-s. 4. See note (s), *post*.)

(11) Persons not subjects of Her Majesty by birth or naturalization.

(n) "Upon such revision, &c." These words, taken in connection with section 22, give the County Judge the power to

Act, in regard to the right of any person to vote, shall be final so far as regards such person. (o) Decision final.

2. A complaint or appeal (Form 4) may be made on the ground of any person whose name is entered on the list being one of those who are disqualified or incompetent to vote under "*The Election Act.*" (p) Persons disqualified under Rev. Stat. c. 10. Form 4.

3. If any person named as a voter in the list has, before the final revision and correction of the assess- Applications by persons

assess "any person not assessed," and to increase the assessment of "any person not sufficiently assessed," and to make such persons liable for the taxes on such assessments. The County Judge has also the power to reduce the assessed value of property assessed too high, for the purposes of his decision "in regard to the right of any person to vote;" but such reduction of the assessment does not carry with it a reduction of the liability to taxation. "For example, a person has procured his property to be assessed above its value in order to enable him to vote. The Judge decides that the true value is under the amount which qualifies. The decision is final as disqualifying the would-be voter, but he remains liable to pay taxes on the full amount on the roll." *Per Patterson, J. A., Lincoln Election (Borrowman's Case), 2 App. R.*

(o) "I do not read those words, 'and the decision of the Judge under this Act in regard to the right of any person to vote shall be final so far as regards such person,' as importing more than that the judgment as to the assessed property is final in its effect on the right to vote." *Per Patterson, J. A., Lincoln Election (Borrowman's Case), 2 App. R.*

(p) This may be defined as the *fourth* ground of complaint, and will include all the official persons disqualified as Parliamentary electors under the *Election Act*, s. 4; and also the following persons disqualified for corrupt practices; (1) Candidates found guilty of corrupt practices by the report of the Election Judge, (R. S. O. c. 10, s. 161); (2) Electors proved on the trial of any election petition, to have been bribed (*Ibid* s. 163); (3) Persons, other than candidates, found guilty of any corrupt practice in any proceeding in which, after notice of the charge, they have had an opportunity of being heard, (*Ibid* s. 164). The report of the Election Judge, that a voter was bribed, does not disqualify him. *Bewdley Election*, 1 O. & H. 175, "The Act speaks of 'an opportunity of being heard,' and I think that does not merely mean that kind of opportunity which a witness has, who is called up, upon the spur of the moment, and who is subject to cross-examination;

Repealed & new section substituted 42 Vict. Cap. 7, 8, 4

who have
acquired or
have parted
with prop-
erty since
assessment.

Form 5.

ment roll, parted with the property in respect of which his name was entered in the voters' list, the person to whom he has transferred the property, or who is in possession of the same, shall be entitled to apply (Form 5) to the Judge to be entered on the list instead of the person originally named therein; (g) and the person who has parted with such property may apply to the Judge to be entered on the list in respect of any other property which he may have acquired in the Municipality, and for which he has not been assessed, or in respect of income; (r) and the proceedings to be taken in such case shall be the same as in cases of appeals under this Act. 39 V. c. 11, s. 4; 40 V. c. 10, s. 4.

Persons of
age within

4. Any person (s) who is rated, or liable to be rated,

but it means an opportunity of being heard, when he has had fair warning of the charge, and is asked to meet it, and be heard by himself or his counsel." *Per Blackburn, J., Ibid.* The County Judge has no jurisdiction in respect of corrupt practices committed at elections for the House of Commons. See 37 Vic. c. 9, ss. 102, 104, Can.

(q) This gives a personal right of appeal to a person who becomes interested in the assessed property before the final revision of the roll. His application will be for the two-fold relief set out in the third (3) class in note (k) *ante*, and in the second (2) class, note (m) *ante*.

(r) The interpretation given to section 11 of the Voters' List Act of 1874, (s. 22 of this Act,) was that the County Judge had no power to insert on the Voters' List, the name of any person claiming to be qualified as an income voter, unless such person has been entered upon, and assessed for income by, the last revised Assessment Roll. *Lincoln Election (Borrowman's Case)*, 2 App. R. Such interpretation would make this clause read, that the application to be entered on the Voters' List, must be in respect of property acquired after the preparation, and prior to the revision, of the Assessment Roll, and for which he has not been assessed; or in respect of the income for which he was assessed by the last revised Assessment Roll. The applicant should also apply to expunge the name of the person who appears to have been assessed for the property he claims. See (2) in note (m) *ante*.

(s) See note (i) to s. 2, *ante*. If the name appears on the Voters' List, and it is proved, on any application to strike it

on the assessment roll, for real property or income (*t*) 60 days from revision of assessment roll may apply. of the amount requisite to entitle him to vote, and who will be of the age of twenty-one years at any time within sixty days from the final revision and correction of the assessment roll, shall be entitled to apply to the Judge to have his name entered upon the voters' list or upon the assessment roll and the voters' list, as the case may require. (*u*) 40 V. c. 10, s. 4 (2). Form 5 a.

5. A farmer's son (*v*) entitled to be assessed under *"The Assessment Act"* shall, in all respects and for all purposes, have the right to apply and complain to the Judge on the revision of the Voters' Lists, and to have his name entered and inserted in the list (*w*) in the same manner and with the same effect as if he were actually and *bona fide* a joint or separate owner, tenant or occupant as the case may be, (*x*) of the farm in respect of which he is entitled to be entered in the assessment roll. 40 V. c. 9, s. 4. Farmers' sons assessed under Rev. Stat. c. 180, s. 20 may apply. Form 5 b.

off, that the minor comes within this provision of the Act, the Judge would retain the name. Where a voter was objected to as a minor, but it appeared he became of age previous to the revision, the vote will not be struck off. *Powell v. Bradley*, 34 L. J. C. P. 67.

(*t*) "Liable to be rated on the Assessment Roll for income." This is the only place in the Act where these words appear. This clause was not in the Voters' List Act of 1874.

(*u*) The notice may be in the form given in the schedule, as Form 5a.

(*v*) Though the farmer's son may be entered on the Assessment Roll, his right to vote depends upon the title by which his father, or mother, or step-father holds the real property assessed. The right is conferred upon the sons of *Owners*, who are actual occupants, and not upon the sons of *Tenants*, or *Occupants*, of farms. The entry on the Assessment Roll as to the title is not conclusive. See note (*t*) to s. 2, sub-s. 9, *ante*, and 41 Vic. c. 21, s. 9.

(*w*) The notice may be in the form given in the schedule, as Form, 5b.

(*x*) There is a difference in the statutory rules regulating the right to vote of farmers' sons, and of joint owners, tenants, and occupants. In the case of farmers' sons, if there be more

Person complaining of errors in the list.

9. Any voter or person entitled to be a voter (*y*) making any complaint of any error or omission in the said list shall, within thirty days after the Clerk of the Municipality has posted up the said list in his office, (*z*)

than one, the right to vote belongs to the father, or stepfather, and so many of the elder sons, or to so many of the elder sons, (if their mother is owner), as the assessment, if equally divided at \$200 each, for Parliamentary, or \$100 each, for Municipal elections, will give to each a right to vote. *Election Act*, s. 7, sub-s. 2. In the case of joint owners, if the property is rated at an amount sufficient, if equally divided between them, to give a qualification to each, then each of them are to be deemed rated, otherwise none of them are to be deemed so rated, or entitled to vote. *Ibid.* sub-s. 3.

(*y*) See notes (*g*) and (*h*) to s. 8.

(*z*) "Within thirty days after." The day of the posting of the list is not included in reckoning the thirty days. See note (*p*) to s. 11, *post*. No exception is made for Sundays and statutory holidays in the computation of time under this Act, as in the *Election Act*, (s. 196); *Controverted Elections Act*, (s. 106); *Common Law Procedure Act*, (s. 67). But the *Act to prevent the profanation of the Lord's Day* (R. S. O. c. 189), declares it to be unlawful for any merchant, &c., or other person whatsoever, on the Lord's Day, to do, or exercise, any worldly labour, business, or work of his ordinary calling, (s. 1); or to hold, convene, or to attend any public political meeting, (s. 2), under a penalty of not less than \$1, and not more than \$40, (s. 8). When a statute directs that a claim shall be made within a certain specified time, this right will be forfeited by an omission to assert the right within the given time. *Doe dem. Watson v. Jefferson*, 2 Bing. 118. "The laws assist those who are vigilant, not those who sleep over their rights," is one of the maxims which we learn on our earliest attendance in Westminster Hall." *Per* Heath, J., in *Cox v. Morgan*, 2 B. & P. 412. It applies in Courts of Equity as well as in Courts of Law; *Per* Lord Cranworth, in *Leather Cloth Company v. American Leather Cloth Company*, 11 H. Lds. Cas. 523. And the maxim is obviously applicable whenever a party debars himself of a legal right or remedy, by his own negligence or laches. *Camidge v. Allenby*, 6 B. & C. 373. The maxim also applies to a voter who has neglected to apply to correct a mistake in the overseer's list of persons qualified to vote. *Per* Coltman, J., in *Onions v. Bowdler*, 5 C. B. 74. When the Legislature has fixed the time, it would be preposterous for the Courts to countenance laches beyond the period that it had been confined by Act of Parliament.

give to the Clerk or leave for him at his residence or place of business, notice (Form 6) in writing of his complaint and intention to apply to the Judge in

Form 6
To give
notice to the
Clerk, or if

Smith v. Clay, 3 Brown's Ch. R. 639 n. The complaint must be made within the time limited. *Regina ex rel. Telfer v. Allan*, 1 Pr. R. 214; *Regina ex rel. White v. Roach*, 18 Q. B. 226. Where the party has a certain number of days to do an Act, and the last day for doing such act falls on a holiday, then such day is not excluded from the computation; but if the party cannot do the act unless the offices are open, and the last day for doing it falls on a day upon which the offices are closed, by reason of its being a holiday there, then such day is not to be reckoned. *Wilkinson v. Britten*, 1 Scott N. R. 348, s. c., 1 M. & Gr. 557. Where a notice of appeal is a notice of what one Court has decided, and authorizes another Court to take further proceedings, it is in the nature of "process," and under 29 Car. II, c. 7, cannot be served on Sunday. *Regina v. Justices of Middlesex*, (1848) 17 L. J. M. C. 111. But notice of appeals in respect of registration of voters is not "process" of a judicial character. *Per Tindal, C. J.*, in *Rawlins v. Overseers of West Derby*, 2 C. B. 79. At common law Sunday was included in the calculation of time. *Ibid.* "The reason of Sunday not being a day of business, is the decent observance of the Sabbath." *Per Eyre, C. J.*, in *Measure v. Britten*, 2 H. Bl. 617. When notice of an appeal from a conviction was required to be served "within six days after" the conviction, the conviction being on Monday the 2nd May, a notice of appeal served on Monday the 9th May was held to be too late. *Regina v. Justices of Middlesex*, (1843) 7 Jur. 396; *Rowberry v. Morgan*, 23 L. J. Ex. 191. Where the last day for giving the notice of appeals from the list of voters, happened to be a Sunday, the notice may be given on that day; the service is not void by statute nor by the common law. *Rawlins v. Overseers of West Derby*, 2 C. B. 72, s. c., 15 L. J. C. P. 70. A notice posted so as to be received on a Sunday is well served. *Colville v. Lewis*, 2 C. B. 60. Service on a Good Friday is good. *Clarke v. Fuller*, 2 U. C. R. 99. As the Courts do not sit on a Sunday no judicial act can be done or supposed to be done until the following Monday. 1 Chitty's Archibold's Pr. 142. The lateness of the hour of service on the proper day does not affect its validity. A notice served on a grown person at the residence of the proper officer at twenty minutes past eleven o'clock at night, held, sufficient. *Points v. Attwood*, 6 C. B. 38. Where the notice was placed under respondent's door a short time before twelve o'clock at night, but the witness did not hear the clock strike, held, not sufficient proof of service. 1 Stephen's Law of Elections 754.

no Clerk, to
head of the
Council.

respect thereof; (a) and if the office of Clerk is vacant by reason of death, resignation or from any other cause, such notice may be given in like manner to the head of the Council of the Municipality, (b) and the proceedings

(a) The notice of objection need not be signed by the objector on the day it bears date, but it is sufficient if it be signed by him on any day within the period he is by law qualified to object. Therefore, a notice bearing date the 12th, but in fact signed on the 18th August, was held good. *Jones v. Jones*, 35 L. J. C. P. 94. Although the claimant ought to write his signature himself, nevertheless if written by the hand of another person, and such notice is acted upon, no third person can object to it on the ground of its not being properly signed. *Davies v. Hopkins*, 3 C. B. N. S. 376, s. c., 27 L. J. C. P. 6. It is sufficient if signed with the name of the claimant in the handwriting of another person by the authority of such claimant. *McNiffe v. McTiernan*, 3 Ir. Law R. N. S. 187. If the signature is "wholly illegible so that an ordinary person, unacquainted with the signature, could not, by perusing it with ordinary diligence and skill, arrive at any reasonable conclusion what the signature was intended to designate," but if guided to the entry in the register by the objector's place of abode, he might have inferred the identity; *held*, reversing the revising barrister, that the notice was sufficient, on the ground that if the object of the statute was to authenticate the document, the signature was sufficient; and if the object was to inform the opposite party, the revising barrister had not found that it did not so notify. *Trotter v. Walker*, (*Hallam's Case*), 32 L. J. C. P. 60. It is not necessary that a separate notice of objection should be given in respect of each voter objected to in the list; all the names of voters objected to may be included in one notice. *Smith v. Holloway*, 35 L. J. C. P. 100. Where in the body of the notice the objector instead of using the pronoun inserted his surname before his Christian name, but it was found to be "commonly understood," *held* sufficient. *Force v. Floud*, 33 L. J. C. P. 71. The omission of the objector to sign the notice of objections is fatal to his right to proceed. *Toms v. Cuming*, 7 M. & Gr. 347. (But see s. 18 and notes, *post*.) Technical objections as to matters of form before a County Judge on the revision of the Voters' Lists ought not to prevail when no one can be misled or injured by the alleged errors. *Per Richards*, C. J., in *Re McCulloch and the Judge of Leeds and Grenville*, 34 Q. B. 451.

(b) That is, by giving to the head of the Council, or leaving for him at his residence or place of business. When the service is not personal, it may be served at the officer's place of abode on some grown-up person connected with his household.

thereafter by the Clerk, (c) Judge, (d) and parties respectively, and the respective powers and duties of the Judge, Clerk and other persons, (e) shall be the same, or as nearly as may be the same, as in the case

Proceedings
as in Court
of Revision.

Mittleberger v. Whitehead, M. T. 1 Vic. Rob. & Jos. Digest 2901; *Carlisle v. Orde*, 7 C. P. 456. But see *Hogg v. Turner*, *Wright v. Perkie*, 1 C. L. J. N. S. 267; *McQuin v. Benjamin*, 1 C. L. Ch. 142. Where a public officer receives and acts upon a notice, it must be assumed, in absence of evidence to the contrary, that he received it in proper time. *Godsell v. Innous*, 17 C. B. 295, s. c., 25 L. J. C. P. 79.

(c) The Clerk after receiving notice from the Judge (Form 8). of the day for the hearing of appeals, shall (1) at least six days before the sitting of the Court give notice to each person complained against, (R. S. O. c. 180, s. 59, sub-s. 4), by causing the notice to be left at the person's residence or place of business, (*Ibid.* s. 56, sub-s. 10); or if the person is not known, then to be left with some grown person resident at the assessed premises; or if the person is not resident in the Municipality, then to be addressed to such person through the post office. (*Ibid.* sub-s. 11). (2) Post a notice in his office, or in the Townhall, (Form 9), containing the names of the complainant and parties complained against, with a brief statement of the grounds of complaint, and the date at which the Judge will hear the same. (*Ibid.* s. 59, sub-s. 5.) (3) Act as Clerk of the Court. (*Ibid.* sub-s. 6).

(d) The Judge, after receiving the Clerk's report, (Form 7), shall (1) notify the Clerk (Form 8) of the day he appoints for hearing the complaints. (R. S. O. c. 180, s. 59, sub-s. 3; (2) If the Clerk has not given the required notices to the parties, he may direct services to be made for some subsequent day. (*Ibid.* sub-s. 4). (3) To hear the complaints at the time appointed, or to adjourn the hearing from time to time, and defer judgment, (*Ibid.* sub-s. 7); but so that such complaints shall be heard and determined, and the list finally revised, corrected, and certified within two months of the last day for making complaints. (41 Vic. c. 21, s. 8.)

(e) If the party complained against, appears on the day appointed, he cannot be heard to object to the sufficiency of the notice to him. *Rawlins v. Overseers of West Derby*, 2 C. B. 72, s. c., 15 L. J. C. P. 70. But where the appearance of the party was for the purpose of objecting to the want of service of the proper notices, held not a waiver. *Regina v. Court of Revision of Cornwall*, 25 Q. B. 286. To dispense with the proof of service there must be an actual appearance

Forms 7-12. of an appeal from the Court of Revision; (f) but no deposit shall be required to be made before any such complaint is heard or disposed of. (See Forms 7-12.)

The case of notice left with head of the Council.

2. If the notice is given to or left for the head of the Council, he shall perform or cause to be performed such necessary acts as should be performed by the Clerk, if there were one. (g) 39 V. c. 11, s. 5; 40 V. c. 10, s. 1.

Compelling attendance of witnesses on revision of list.

10. Any party may obtain from the County Court a subpoena (h) (Form 13), or from the County Judge an order, (i) requiring the attendance at the Court for hearing complaints as aforesaid, at the time mentioned in such subpoena or order, of a witness residing or served with such subpoena or order in any part of this Province; and requiring any such witness to bring

on the day the case is called on. *Grover v. Bontemps*, 4 C. B. 38, s. c., 16 L. J. C. P. 70.

(f) The proceedings and duties of the Judge under this section are the same, or, as nearly as may be, the same, as in appeals from the Court of Revision under the *Assessment Act*, s. 60-63. The Judge has also, under s. 14, *post*, "all the powers which belong to, or might be exercised by, him in the County Court."

(g) See note (c) to sub-s. 1, *ante*. Where on a vacancy a new clerk is appointed, he can carry on the proceedings respecting the Voters' Lists, commenced by his predecessor. *Re Goderich Voters' Lists* of 1874, 6 Pr. R. 213.

(h) Disobedience of a subpoena of a County Court is a contempt of court, and may be punished as such. The County Courts may punish by fine or imprisonment, or both, for any wilful contempt or resistance to their regular process, rules, or orders; but such fine shall in no case exceed \$100, nor shall such imprisonment exceed six months. (R. S. O. c. 43, s. 33). Every Court of record has the power to punish for contempt; but if the Court is one of inferior jurisdiction, the Superior Court may intervene and prevent any usurpation of jurisdiction by it. *Ex parte Lees and the County Judge of Carleton*, 24 C. P. 214. But see *In re Clarke and Heermans*, 7 U. C. R. 223.

(i) For the purposes of this Act the Judge has "all such powers for the enforcement of his orders, decisions, and judgments, as belong to, or might be exercised by, him in the Division Court, or in the County Court, either in term time, or vacation." See note (f) *ante*; R. S. O. c. 180, s. 61; c. 43, s. 33; and c. 47, s. 217.

with him and produce at the Court any papers or documents mentioned in the subpoena or order; and every witness served with such subpoena or order shall obey the same, (j) provided the allowance for his expenses, according to the scale allowed in Division Courts, is tendered to him at the time of service. (k) ^{Division Court fees.}

2. Any person complaining, or any person in respect of the insertion or omission of whose name a complaint is made, shall, if resident within the Municipality the list of which is the subject of complaint, or within the Municipality in which the Court is held, upon being served with a subpoena or order therein, obey the same (l) without being tendered or paid any allowance for his expenses. ^{Person whose right is in question to attend.}

3. If any person, whose right to be a voter is the subject of inquiry does not attend in obedience to such subpoena or order, the Judge, if he thinks fit, in the absence of satisfactory evidence as to the ground of ^{Penalty on non-attendance of the person whose right is in question.}

(j) The original writ of subpoena, under the seal of the Court, or the original order with the signature of the Judge, must be shewn to the witness at the time of the delivery to him of the copy of subpoena or order. *Smith v. Truscott*, 6 M. & Gr. 267.

(k) An attachment against a witness will not be granted where the conduct money is not paid or tendered. *Newton v. Harland*, 1 M. & Gr. 956. Nor if the copy of the subpoena served, varies in any material degree from the original. *Doe v. Thompson*, 9 Dowl. 948. But where a subpoena tested on the 9th May, and served on the 19th, required the attendance of the witness on the 21st March instant, the Court considered that this was an error which could not mislead, and refused to set aside the service. *Page v. Carew*, 1 Cr. & Jer. 514.

(l) See notes (h) (i) and (j) ante. The respondent's name appeared on the previous lists, and on the current year's list. He was summoned by the objector, who proposed to examine him to prove he was not qualified to be on the list. The respondent declined to be examined until some evidence was given to displace his right, and was not therefore examined. The vote was retained; held, reversing the revising barrister, that the respondent was bound to give evidence when called. *Peterson v. Balfour*, 10 Ir. C. L. 553.

Loss of vote. such non-attendance, or as to the right of such person to be a voter, may, on the ground of the non-attendance of such person, strike his name off the list of voters, or refuse to place his name on the list of voters, (m) as the case may require, or impose a reasonable fine on such person according to his discretion, or do both. (n)

Fine.

Insertion of several names in subpoena. 4. Any number of names may be inserted in one subpoena or Judge's order, in any case of complaint. (o) 39 V. c. 11, s. 9.

List confirmed if no complaint 11. In case no complaint respecting such list is received by the Clerk of the Municipality, (p) within

(m) The name of a voter was duly objected to in the notice of objections. The objector was present in Court to sustain his objection, but the voter did not attend to support his right to be on the register of voters when the name in its order was called; and the revising barrister, in the exercise of his discretion, struck the name off the list of voters: *Held*, that the name could not be restored on a subsequent application, and there was no proof that the objector was ready with his proofs on the second hearing. *Blain v. Overseers of Pilkington*, 34 L. J. C. P. 55. Where a voter's name was struck off by the revising barrister owing to the non-attendance of such voter. *Held*, to be an "express decision" of the revising barrister. *Oldham Election*, (*Harper's Case*) 1 O. & H. 157. See 41 Vic. c. 21, s. 4, *post*.

(n) When the non-attendance of the person whose right to be a voter is the subject of inquiry, is the result of mere neglect, i.e., "the absence of satisfactory evidence as to the ground of such non-attendance," or as to his right to vote, then a reasonable punishment would be his temporary loss of the franchise, by the omission of his name from the Voters' List for that year; but when such non-attendance is wilful—a fact which can only be determined on proper evidence—the punishment may be either loss of the vote, or a reasonable fine, or both.

(o) It is not necessary to issue a subpoena or order in each case. The names of all the witnesses, in all the cases, may be included in the one subpoena or order. See *Smith v. Holloway*, note (a) to s. 9.

(p) In case the Clerk should refuse to receive complaints properly tendered to him, and should report to the Judge that no person gave him, nor did he receive, any written notice of complaint, the Clerk of the Peace, or any elector may, under s.

thirty days after (g) he has posted up the said list in his office, the said Clerk shall forthwith apply (Form 14) either in person or by letter, to the Judge (r) to certify

within 30 days after the Clerk has posted up the list.

24, apply summarily to the County Judge to compel the Clerk to perform his duties. But if the Judge has signed the lists on the certificate of the Clerk, the parties aggrieved may apply to one of the superior Courts for such relief as would compel the re-opening of the lists.

(g) The general rule for the computation of time fixed by statute is, unless there is something in the statute to the contrary, to hold the first day excluded, and the last day included, as "within twenty days of the execution." *Ex parte Fallon*, 5 T. R. 283. "Within twenty-one days after the execution." *Williams v. Burgess*, 12 A. & E. 635, s. c., 9 Dowl. 544. "Within sixteen days after the service hereof." *Scott v. Dickson*, 1 Pr. R. 366; *Vrooman v. Shuert*, 2 Pr. R. 122, and cases, *Ibid.* 126, 144, 145, 233, 259. "Within twenty-one days after the return has been made." *West Toronto Election*, 5 Pr. R. 394, 31 Q. B. 409. The question whether, in computing time from an act or event, the day is to be included or excluded may be thus stated: where the act done, from which the computation is made, is one to which the party, against whom the time runs, is privy, the day of the act done, may reasonably be included; but where it is one to which he is a stranger, it ought to be excluded. *Lester v. Garland*, 15 Ves. 248. "Our law rejects fractions of a day more generally than the civil law does. The effect is to render the day a sort of indivisible point, so that any act done in the compass of it, is no more referable to any one than to any other portion of it; but the act and day are co-extensive, and therefore the act done cannot be said to be past until the day is past." *Per Sir William Grant, M. R., Ibid.* Judicial proceedings are to be considered as taking place at the earliest period of the day on which they are done. *Wright v. Mills*, 4 H. & N. 488; so are also Acts of the Legislature. *Converse v. Michie*, 16 C. P. 167.

(r) In 41 Vic. c. 21, s. 3, "five days" is prescribed, instead of "forthwith." See note (d), p. 18. The English Act (6 Vic. c. 18, s. 100) provided that notices should be sent by post, and that a duplicate notice stamped by the post office should be evidence of a notice having been given: *Held*, that service made, by leaving the notices at the officer's place of abode, was good service, the section being entirely an enabling enactment, and not taking away any of the modes of service which were consistent with the law as it stood before the statute passed. *Hickton v. Antrobus*, 2 C. B. 82; *Smith v.*

Form 14.
Form 15.

Three lists
to be certi-
fied by
Judge.

After final
revision,
Judge to
make state-
ment of
alterations
and certify
copies of list.

Form 16.
Form 17.

(Form 15) three copies of such list as being the revised list of voters for the Municipality; and the Judge shall retain one of such certified copies of the list, and deliver or transmit by post, registered, one of such certified copies to the Clerk of the Peace for the County or Union of Counties within which the Municipality lies, and one of such certified copies to the Clerk of the Municipality, to be kept by him among the records of his office. (s) 39 V. c. 11, s. 6.

12. In case complaints are made as aforesaid, immediately after the list has been finally revised and corrected by the Judge, (t) the Judge shall make or cause to be made, and shall sign, a statement (Form 16) in triplicate, setting forth the changes, if any, which he has made in the list; and shall certify in triplicate (Form 17) a correct copy of the list. (u)

Huggett, 11 C. B. N. S. 55. But where the objector serves the notice through the post office, and the party addressed resides a distance from the office to which the notice is directed, he must shew that such notice would, in the ordinary course of post, be delivered to the party addressed within the time specified by the Act. *Lewis v. Evans*, L. R. 10 C. P. 297.

(s) And thereupon, under the *Voters' List Finality Act*, the lists, by virtue of the certificate of the Judge, become "final and conclusive evidence of the right of all persons named therein to vote at any election at which such list was or could have been legally used." (41 Vic. c. 21, s. 3).

(t) The complaints are to be "heard and determined, and the list finally revised, corrected, and certified under the *Voters' List Act*, within two months of the last day for making such complaints," (41 Vic. c. 21, s. 8) i.e., two months after the thirty days mentioned in ss. 9 and 11. See notes (z), page 26, and (q), page 33.

(u) The proceedings to revise, correct, and certify the Voters' Lists are in the nature of a judicial proceeding, in which every facility is given to purge the lists; and it will be owing either to negligence or fraud, that, after the sifting process the Assessment Roll and Voters' List are put through,—once before the Court of Revision, and twice before the County Judge,—any Voters' List, to be used at elections, shall be found to contain the name of a single unqualified vote. By the Eng. Act, 28

2. The Judge shall retain one of such certified copies and one statement, and shall deliver or transmit by post, registered, one of such certified copies and one statement, to the Clerk of the Peace, for the County or Union of Counties within which the Municipality lies, (v) and one of such certified copies and one statement to the Clerk of the Municipality, to be kept by him among the records of his office. (w) 39 V. c. 11, s. 8.

How the Judge shall dispose of the statements and copies of certified lists.

Vic. c. 36, s. 15, the revising barrister, before signing, is to read out, in open Court, the names expunged, and inserted, by him, and all corrections made by him. Until the lists are actually signed and delivered, the register of voters cannot be said to be complete, even although, in the meantime, printed copies of the register have been issued by the Clerk of the Peace, and bear his name. *Bunift v. Bremner*, 9 C. B. N. S. 1, s. c. 30 L. J. C. P. 33. In this case, as late as two months after the statutory period, and before the signature of the proper officer and delivery to the Sheriff, (he being the custodian of the lists,) it was discovered, on the application of a voter, that his name was accidentally omitted, the revising barrister not having expunged the name, but having inadvertently caused the appearance of an erasure of the name: *Held*, that the Clerk of the Peace was justified in causing the name to be interlined, and that the name was duly registered. *Ib.* Where the name of a voter was struck off the register of voters, by the mistake of the revising barrister, and the voter tendered his vote at the polls: *held*, that the vote could be counted. *Oldham Election*, (*Ogden's Case*), 1 O. & H. 156. So when the voter was struck off improperly, *Ib.*

(v) The last list of voters certified by the Judge, and delivered to the Clerk of the Peace, at least one month before the date of the writ of election, is (subject to certain exceptions) the list to be used at an election. (R. S. O. c. 10, s. 72). Only the persons named on such list can vote at the election. *Ibid.* s. 73 and 94. Copies of the list so filed with the Clerk of the Peace are to be procured for and used at the election. S. 79. See *Monck Election*, 32 Q. B. 147.

(w) The *Election Law* of 1868, (32 Vic. c. 21, s. 35) provided that if the Clerk of the Municipality was not the Deputy Returning Officer, or if the copy in the possession of the Clerk had been lost or destroyed, the Returning Officer should procure a copy of the proper list of voters from the Clerk of the Peace. This provision is omitted from the Revised Statutes. (c. 10, s. 79). But see 41 Vic. c. 21, s. 12.

MISCELLANEOUS PROVISIONS.

Money allowed
to provide
Court room.

Payment
therefor.

Courts in
county
towns.

Powers of
Judge as in
County
Court.

13. It shall be the duty of the Municipality within which a Court is holden, to provide some suitable and convenient place, properly furnished, heated and lighted for the holding of such Court, and in case such is not done the Judge may hold said Court at such other place in the County as he may deem proper; and if the same is held elsewhere than in the County Court-House, the proprietor or proprietors of the building in which it is held may recover from the Municipality which should have made such provision the sum of five dollars for each and every day during which such building is used for the purpose of such Court. (x) Any Court held in the County Hall shall be held in the County Court-House, or in such other place in said County Town as the Judge may deem proper. 39 V. c. 11, s. 16.

14. In all proceedings before the Judge under this Act, the Judge shall have, with reference to the matters herein contained, all the powers which belong to or might be exercised by him in the County Court. (y) 39 V. c. 11, s. 17.

(x) This is similar to the provisions in the *Division Courts Act*, making it the duty of the municipality to provide accommodation for the Division Court. (R. S. O. c. 47, s. 9).

(y) See Revised Statutes, cc. 42 and 43. The Voters' List Court has complete jurisdiction to judicially determine who are, and who are not, entitled to the franchise, as voters at Parliamentary and Municipal elections. There is no appeal from the decision of the Judge, on any question of fact, to any higher tribunal; and his decisions on questions of law can only be reviewed by proceedings in the Superior Courts in the nature of applications for the Writs of *Certiorari*, *Mandamus*, or *Prohibition*. In England there is a right of appeal from every "express decision" of a revising barrister; but under the *Voters' List Finality Act* (41 Vic. c. 21, s. 3), the Voters' List certified by the County Judge is final and conclusive as to the right of all persons named therein to vote at any election, at which such list is used. But as all inferior Courts, created by statute, are bound to adjudicate only on such matters as are clearly

15. The Judge shall have power to appoint some <sup>Appoint-
ment of</sup> proper person to attend at the sitting of the Court as a Constable, Constable or Bailiff; and the duties and powers of ^{His duties.} such person thereat shall be as nearly as may be the same as those of the Bailiff of a Division Court at a sitting of a Division Court and in reference thereto;

within their jurisdiction, the Superior Courts,—having a general superintendence over all subordinate Courts, to see that their functions are restrained within, or are fulfilled according to, the laws and stated rules by which their jurisdiction is confined and circumscribed,—may, under their common law or statutory powers, restrain or regulate the jurisdiction of such inferior Courts. In the Voters' List Court, the County Judge has, by virtue of this Act and the *Assessment Act*, the powers of the County and Division Courts, and the Court is, therefore, by virtue of such powers, a Court of Record. Whenever power is given to any inferior Judge or tribunal to punish by fine or imprisonment, or both, such Judge or tribunal is a Court of Record. And when a Court in its nature is a Court of Record, a *certiorari* will lie to it from the Queen's Bench by reason of the great superiority of that Court, which may command them to send the proceedings before them, up thither, that it may be seen whether they confine themselves to their jurisdiction, which, if they exceed, that Court may correct them. *Grenville v. College of Physicians*, 12 Mod. 386, s. c., *nom. Groenvelt v. Burwell*, 1 Ld. Ray. 213. *Certiorari* lies to remove the proceedings of any jurisdiction created by Act of Parliament. *Regina v. Glamorganshire*, 12 Mod. 403, s. c., 1 Ld. Ray. 580. *Re Richardson and the Police Commissioners of Toronto*, 38 Q. B. 621. It also lies to review the legislative acts of Corporations. *State v. Newark*, 1 Dutcher 399. Where an act is required to be done for the public good, and there has been a wrongful omission to do it, and a serious inconvenience will arise from its not being done, a Superior Court of law has the power of ordering it to be done under the prerogative writ of mandamus. *Per Lord Campbell, C. J.*, in *Regina v. Mayor and Assessors of Rochester*, 7 E. & B. 924. The Court will grant a mandamus to a County Judge, directing him to inquire into and decide whether the name of a voter is improperly omitted from the Voters' List, or whether one person's name should be struck out, and another's inserted in lieu thereof. *Re McCullough and the Judge of Leeds and Grenville*, 35 Q. B. 449. The writ of Prohibition lies to an inferior Court, having a limited statutory jurisdiction, from which there is no appeal, or writ of error. *Thomson v. Ingham*, 14 Q. B. 710, s. c. 14 Jur. 429.

Municipality to pay the expenses. (z) and the expenses of the person so appointed and attending shall be borne by the Municipality, the list for which is the subject of investigation, and shall include such allowance for loss of time, trouble and travelling fees as may be certified by the Judge to be reasonable; (a) and the amount certified by the Judge shall be paid to such person by the Treasurer of the Municipality upon the production and deposit with him of the Judge's certificate. 39 V. c. 11, s. 18.

Clerk to be subject to the summary jurisdiction of the Judge.

16. The Clerk of every Municipality shall be subject to the summary jurisdiction and control of the County Judge in respect to the performance of his duty under this Act, and in respect to every act required to be performed by such Clerk touching the Voters' List, in the same manner as officers of the County Court are to the Court; (b) and the Clerk shall receive reasonable compensation for the services performed. (c) 39 V. c. 11, s. 19.

(2) These powers and duties are, to exercise the authority of a constable during the actual holding of the Court, with full power to prevent breaches of the peace, riots, or disturbances, within the court room or building in which the Court is held, or in the public streets, &c., within the hearing of the Court; and with or without warrant to arrest all parties so offending, and forthwith to bring them before the nearest J. P., or any judicial officer having power to investigate the matter. (R. S. O. c. 47, s. 46).

(a) This provision is now altered by 41 Vic. c. 21, s. 16, *post*. Constables are entitled to \$1.50 per day for attending Court, and 10 cents per mile one way for each mile actually and necessarily travelled to effect the service of any process or notice, including the service, receipt, and return, &c.

(b) By s. 9, the powers and duties of the Clerk are the same as in the case of an appeal from the Court of Revision; and one of such duties of the Clerk, is to act as Clerk of the Judge's Revision Court. See R. S. O. c. 180 s. 59, sub-s. 6, and note (c) to s. 9, page 29. He is thus constituted Clerk of the Judge's Court for the revision of the Voters' Lists; and this section makes him subject to the summary jurisdiction of the County Judge.

(c) The compensation of the Clerk is now fixed by 41 Vic.

17. If a Judge who holds a Court believes or has good reason to believe that any person or persons have contravened the twenty-seventh (d) or thirtieth (e) sections of this Act, or that frauds in respect to the assessment or the Voters' Lists have prevailed extensively in the Municipality, (f) it shall be his duty to report the same to the Provincial Secretary, with such particulars as to names and facts as he may think proper. 39 V. c. 11, s. 20.

Report by
Judge as
frauds, &c.,
to be made
to Provincial
Secretary.

c. 21, s. 15, at \$3 per day for attending Court and his actual and reasonable disbursements, in cases where the by-law or contract, under which he is employed, provides no compensation for his services under this Act.

(d) The Judge is to report any person who has made, executed, accepted, or become a party to any lease, deed, or other instrument, or become a party to any verbal arrangement whereby a colorable interest in any land, house, or tenement is conferred in order to qualify any person to vote. The offence is defined to be "occasionality," or "splitting votes," which means a fraud on the law of Parliament, in the same manner, and upon the same principle, as in ordinary cases is included in the term fraud on the common law. An "occasional voter" is defined to be "one whose qualification, whether from estate, office, or other cause, is conferred, or taken, for the purpose of voting at an election for a particular interest." 1 Stephens's *Law of Elections*, 416. See also (b) to s. 27, page 49.

(e) The Judge is also to report any Assessor who wilfully and improperly assesses or omits to assess parties, so as to give, or deprive of, a right of voting such parties contrary to the statute. See also note (f) s. 30.

(f) "Electioneering consciences are very elastic. The franchise opens a boundless field for the manufacture of votes." *Per* Sergeant Cox, Ex M. P. for Taunton. (Cox and Grady's *Registration and Elections*, p. lii.) "I found that a good deal of perjury was committed in the election cases that came before me. There were a good many witnesses whom I did not believe, and who I thought were wilfully stating what was not true." *Per* Blackburn, J., *Committee on Parliamentary and Municipal Elections* (1869) 520. If the Judge has good reason to believe that frauds in respect of the addition or omission of names have prevailed extensively in the Municipality, it becomes his duty to report the facts to the Government. The object of this section is to enable the Crown, on

Amendment
of notices,
&c.

18. The Judge shall have power to amend any notice or other proceeding upon such terms as he may think proper. (g) 39 V. c. 11, s. 21.

the report of the Judge, to take prompt and effective measures for the prosecution of the offenders against the laws affecting the rights of electors to their Parliamentary franchises, and thus impose penal restraints upon the ingenuity of election agents and fraudulent assessors. A duty similar in its object is cast upon the Election Judges by the *Controverted Elections Act*, s. 58, to report to Parliament respecting corrupt practices, and the agents guilty of such corrupt practices, at elections; on which Blackburn, J., observed: "The enactment provides that, on the case being finished, the evidence should be laid before the Attorney-General to consider whether he would prosecute or not." *Bewdley Election*, 1 O. & H. 176. See also the evidence of Willes, J., before the Committee on Parliamentary and Municipal Elections, (1869), 442.

(g) The legislative policy as to amendments is contained in the *Administration of Justice Act* s. 8, and the *Common Law Procedure Act* s. 270, by which the Judge is empowered in all suits and other proceedings to make all such amendments as may seem necessary for the advancement of justice, the prevention and redress of fraud, the determining of the rights and interests of the respective parties, and of the real question in controversy between them, and best calculated to secure the giving of judgment according to the very right and justice of the case; and such amendments may be made whether the necessity for the same is occasioned by the defect, error, act, default, or neglect of the party applying to amend. See *Gilleland v. Wadsworth*, 1 App. R. 82; *Grant v. Eddy*, 21 Gr. 577, per Blake, V. C.; *McManus v. McManus*, 24 Gr. 118. And by s. 17 A. J. Act, (c. 49), "No proceeding at law or in equity shall be defeated by any formal objection," which is the same as rule lxiii. of the election rules; and is in effect similar to s. 82 of 32 & 33 Vic. c. 71, (English Bankruptcy Act), which provides that "no proceeding shall be invalidated by any formal defect, or by any irregularity." *In re Buckland*, L. R. 15 Eq. 221; *Revell v. Blake*, L. R. 7 C. P. 300; *Regina v. Widdop*, L. R. 2 C. C. 3. See also *Beresford v. Geddes*, L. R. 2 C. P. 285; *Barlow v. Mumford*, L. R. 2 C. P. 81; *Onions v. Bowlder*, 5 C. B. 65; *Eaden v. Cooper*, 11 C. B. 18. The inclination of the Courts is in every way to favor the franchise. *Regina ex rel. Ford v. Cottingham*, 1 C. L. J. N. S. 214. The franchise is not to be lost to any one who is really entitled to vote, if his right can be maintained in a reasonable view of the requirements of the Act. *Regina ex rel. Chambers v. Allison*, 1 C. L.

19. If any appellant or complainant entitled to appeal dies (h) or abandons his appeal or complaint, (i) or having been in the alphabetical list made and posted by the Clerk as aforesaid, is afterwards found not to be

Abandonment by appellant and intervention of some other.

J. N. S. 244. "The presumptions of law are always in favor of the franchise, and Acts of Parliament should be worked out to confer the franchise on those who seem to be within the spirit of the law entitled to it, rather than be strained to deprive parties of a right to vote." *Per* Richards, C. J., *Re McCulloch and the Judge of Leeds and Grenville*, 35 Q. B. 452. "No mere formal or immaterial matter should be allowed to interfere with the voter exercising the franchise." *Per* Blake, V. C., *Lincoln Election, (Borrowman's Case)*, 2 App. R. "The substance of justice, which I have always kept in view in these election cases, is, that the matter shall not be affected by any slips of form." *Per* Blackburn, J., *Oldham Election*, 20 L. T. N. S. 304. "The policy of the law is to inquire into the regularity of elections, and the Court will not, if possible, be astute to discover and give way to technical objections to do away with that inquiry." *Per* Spragge, C., *North York Election*, 1874. Where the polling divisions were improperly designated "Townships" in the lists, the revising barrister was held to have properly exercised his power of amendment by striking out the word "Township" and inserting the proper title of the sub-division. *Elliott v. Overseers of St. Marys* 4 C. B. 76. Where in the opinion of the revising barrister the property was not sufficient for identification, held, amendable. *Howitt v. Stephens*, 5 C. B. N. S. 30; *Cooper v. Ashfield*, *Ibid.* 16. In cases where the lapse of time will bar the right, the Court will amend; *Cowburn v. Waring*, 9 Ex. 207; as in the case of a writ of summons so as to prevent a bar of the action by the Statute of Limitations. *Horton v. Stamford*, 3 Tyr. 869. By adding a new plaintiff after a plea of non-joinder. *Lakin v. Massie*, 4 Tyr. 839. And by adding the official assignee as a plaintiff. *Brown v. Fullerton*, 13 M. & W. 556. See also *Smith v. Walsh*, 1 Ir. Eq. 167.

(h) The maxim, "a personal right of action dies with the person," applies to cases under this Act. See *Nettleton v. Burrell*, 8 Scott N. R. 738; *Pring v. Escount*, 4 C. B. 71. "It may be the notice would fall if the objector were dead." *Per* Byles, J., in *Proudfoot v. Barnes*, L. R. 2 C. P. 94. See also *Callington Election*, 1 Luters 453, s. c., 33 Com. Jour. 481; *Milbourn Port Election*, 16 Com. Jour. 121; s. c., 1 Luters, 456.

(i) A person objecting to certain voters cannot, under the English Registration of Voters Act, (6 Vic. c. 18), withdraw, after giving the statutory notice. *Proudfoot v. Barnes*, L. R.

Judge may
so allow on
terms.

entitled to be an appellant, (j) the Judge may, if he thinks proper, allow any other person who might have been an appellant or complainant to intervene and prosecute such appeal or complaint, upon such terms as the Judge may think just. (k) 39 V. c. 11, s. 12.

2 C. P. 88. "The rights of voting and of objecting, matters in which the interests of the public are greatly concerned. I think it would be to the last degree dangerous to the interests of the public, to allow the objection to be withdrawn at the pleasure of the objector." *Per Erle, C. J., Ibid.* "When the person, who gave the notice, assumed the office of objector, he placed himself in the position of a public officer, and he cannot, of his own mere will, divest himself of it. He gives a notice of objection, and waits until it is too late for any other person to object, and then gives notice that he withdraws his objection. It would be opening the door to fraud to allow this device to prevail." *Per Byles, J., Ibid.* "The right to object is not a mere private privilege, but a matter of public concern." *Per Keating, J., Ibid.*

(j) See note (h) to s. 8. *Re Parsons and Toms and Voters' Lists of Goderich*, 36 Q. B. 88. A relator in a *quo warranto* case is not necessarily bound to prove his interest, unless the respondent question it by denying it and shewing, or at least alleging, some ground for his denial. *Regina ex rei. Bartliffe v. O'Reilly*, 8 U. C. R. 617, s. c., 1 Har. & H. Mun. R. 459. Under the Dominion Elections Act of 1873, a petition was presented to the Superior Court of Quebec, alleging that the election was held on illegal Voters' Lists. The Election Judge found the fact as alleged, but held that the petitioners, owing to such illegal lists, were not qualified to petition. On appeal, the Court of Review reversed his judgment, and held, that an election conducted on illegal Voters' Lists will be set aside, notwithstanding that the petitioners themselves fail to prove that they were legally entitled to petition. *Montreal Centre Election*, 18 L. C. Jurist 323.

(k) This is similar to the right given to parties in Election cases under the *Controverted Elections Act*, ss. 82-93. In such cases, the application for the withdrawal of the petition must be accompanied by affidavits of the petitioner and respondent, to the effect that it is not the result of a corrupt arrangement. Where such affidavits were filed, and the prescribed notice was given, the Judge held he was bound to allow the withdrawal, although electors had memorialized against the withdrawal, but did not ask to be substituted for the petitioners. *Stockport Election*, 19 L. T. N. S. 743. See

20. In case of errors being found in the said Voters List on the said revision thereof, whether such errors are in the omission of names, the inaccurate entry of names, or the entry of names of persons not entitled to vote, (l) if it appears to the Judge (m) that the Assessor was blamable for any of the said errors, the Judge shall order (Form 18) the Assessor, either alone or jointly with any other person, to pay all costs occasioned by the same; (n) and in case of errors for which the Clerk was to blame, the Clerk, either alone or jointly with any other person, shall be charged with the costs; (o) and in case of errors of the Court of Revision,

Costs occasioned by errors may be ordered to be paid by guilty parties.

also *Brecon Election*, 2 O. & H. 33; *Durham Election*, 31 L. T. N. S. 321. The election rules (Nos. liii. and liv.) require five days' notice of the petitioner's intention to withdraw his petition, so that any qualified person may intervene and apply to be admitted to prosecute the petition. No rules regulating the practice under this Act, have been prepared by the Board of County Judges under s. 32.

(l) It may be assumed that this means "wilful errors." The maxim, *omnia presumuntur rite et solemniter esse acta, donec probetur in contrarium*, applies to the acts of a Court, and to acts which require the concurrence of official persons. *Bank of United States v. Dandridge*, 12 Wheat. 70. The general presumptions of law are, that a Court does nothing causelessly and maliciously; that the decisions of a Court of competent jurisdiction are well founded, and their judgments regular; and that facts, without proof of which the verdict could not have been found, were proved at the trial; and that the records of the Court, have been correctly made according to the rule, *res iudicata pro veritate accipitur*, Co. Litt. 103 a; Broom's *Legal Maxims*, 945.

(m) "In all cases where a party is to be affected in person or property by anything analogous to a judicial proceeding, the Court, unless shut out from doing so, by the most absolute and unequivocal words, invariably apply that sound rule of English law which says that no man shall be condemned unheard." *Per Strong, J., in Nicholls v. Cumming*, 1 Sup. Ct. Can. 428; Maxwell, *On Statutes*, 325.

(n) The assessor is also liable to the penalties mentioned in s. 30. See also the *Assessment Act* (R. S. O. c. 180) ss. 189-194; and the Assessor's oath. *Ibid.* s. 42.

(o) This is additional to the summary jurisdiction of the

the Municipality shall, either alone or jointly with any person, pay the costs, subject to any claim which the Municipality may justly have against the guilty parties; or the Judge may order the Assessor, Clerk or Municipality in any such case, to pay the costs, if any party fails to recover the same from any other party named and ordered to pay the same; and, in all cases not herein provided for, the costs shall be in the discretion of the Judge. (p)

Liability of
appellant for
costs.

2. No costs shall be allowed on any proceeding under this Act, other or higher than would be allowed in the Division Court under the lowest scale of costs in actions therein.

Division
Court costs
only allowed.

3. The only costs to which an appellant shall be liable shall be the witness fees, unless in a case of bad faith on his part. (q) 39 V. c. 11, s. 13.

Costs, pay-
ment of, how
enforced.

Form 19.

21. The payment of any costs ordered to be paid by the Judge may be enforced by an execution (Form 19) against goods and chattels, to be issued from any County Court upon filing therein the order of the Judge, and an affidavit shewing the amount at which

Judge, and the penalties imposed by ss. 25, 26. See also the *Assessment Act*, ss. 189, 191.

(p) Costs are usually given when the case is so clear that the Court does not call upon the other side. *Allen v. House*, 7 M. & Gr. 157, s. c., 1 Cox & Atk. 81; *Passingham v. Pitty*, 17 C. B. 315. But where there is a reasonably fit case for argument, the Court will not give costs. *Croucher v. Browne* 2 C. B. 97; *Collier v. King*, 11 C. B. N. S. 478. The revising barrister may award costs, not less than 2s. 6d. nor more than £5.

(q) Parties are not to be discouraged from bringing cases of disqualification under the notice of the proper tribunals by the peril of having to lose the costs necessarily incurred. *Regina ex rel. Rollo v. Beard*, 3 Pr. R. 357. The tendency of modern decisions is not to compel a party to pay costs, unless it be shown that he participated in the improper conduct for which the election is set aside. *Regina ex rel. Davis v. Wilson*, 3 U. C. L. J. 165. A relator having acted in good faith in bringing forward the matter was not amerced in costs, though unsuccessful. *Regina ex rel. Croxter v. Taylor*, 6 U. C. L. J. 165.

such costs were taxed and the non-payment thereof.
39 V. c. 11, s. 14.

22. If any person not assessed, (*r*) or not sufficiently assessed, (*s*) is found entitled to vote, (*t*) the Municipality shall be entitled to recover taxes from him, and to enforce payment thereof by the same means and in the same manner as if he had been assessed on the roll for the amount found by the Judge; (*u*) and the Judge

Persons whose names omitted from roll and inserted on revision liable to pay taxes

Judge's order.

(*r*) "Person not assessed." This covers the complaint (1) under s. 8, sub-s. 1, "name of voter omitted from the list," note (*k*); (2) under sub-s. 3, "person to whom he (the person originally named on the voters' list) has transferred the property," notes (*g*) and (*r*); (3) under sub-s. 4, "person liable to be rated," notes (*g*) and (*t*); (4) under sub-s. 5, "a farmer's son entitled to be assessed," note (*v*). So in appeals to the Court of Revision (R. S. O. c. 180, s. 56) "person wrongfully omitted from the roll."

(*s*) "Person not sufficiently assessed," i.e., a person "under-charged by the assessor in the roll." (R. S. O. c. 180, s. 56). See (2) in note (*k*) to s. 8, *ante*.

(*t*) The franchise is annexed to an interest in real property, and taxation in respect thereof. *Per* Moss, C. J. A., in *Lincoln Election*, 2 App. R. "An adjudication that the persons named on the list are entitled to vote is not within the jurisdiction of the County Judge. He is to revise the list by adding the names omitted, correcting those wrongly stated, or striking out those improperly there, because those omitted have assessable property, or assessed income; or because those inserted have it to a greater or smaller amount than stated, or have none. He adjudicates as to their property, or income, and in respect of that he corrects the list. The right to vote is the legal consequence only, and not the subject, of the adjudication." "The Judge cannot add to the Voters' List in respect of income, any persons who are not assessed for income on the last revised Assessment Roll." *Per* Patterson, J. A., in *Lincoln Election*, (*Borrowman's Case*) 2 App. R.

(*u*) The process of assessment is in the nature of a judicial proceeding, and it is as much the essence of the whole proceeding that the party should have an opportunity to object, and notice to enable him to do so, as it is in more formal proceedings, where, according to the usual and natural course of proceeding, the party to be affected is cited in the first instance. *Per* Strong, J., in *Nicholls v. Cumming*, 1 Sup. Ct. Can. 427.

Form 20. shall make an order (Form 20), setting forth the names of the persons so liable, and the sum for which each person should have been assessed, and the land or other property in respect of which the liability exists, and such order shall be transmitted to the Clerk of the Municipality, and shall have the same effect as if the said particulars had been inserted in the roll. (v) 39 V. c. 11, s. 15.

Supplemen-
tary Assess-
ment Roll,

Failure of
Clerk to per-
form duties
not to vitiate
list.

23. The times appointed for the performance, by the Clerk of the Municipality, of the duties required of him by this Act, (w) shall be directory only to the said Clerk; (x) and the non-performance by him of any of the said duties within the times appointed, shall not render null, void or inoperative, any of the lists in this Act mentioned (y). 39 V. c. 11, s. 10.

(v) Where the County Judge, under the Voters' List Act of 1874, added a number of names to the Voters' List, which were not found on the last revised Assessment Roll, nor upon any supplementary assessment roll, or Judge's order, under sec. 11 of that Act, shewing such persons to have been assessed for any property or value; *Held*, that the added list was a nullity. *Lincoln Election, (Borrowman's Case)* 2 App. R.

(w) There was no similar provision in the Assessment Act, (C. S. U. C. c. 55, s. 60) under which *Regina v. Court of Revision of Cornwall*, 25 Q. B. 286, was decided.

(x) So far as the public interests are concerned, the Act may be looked upon as directory. *Rex v. Norwich*, 1 B. & Ad. 310; *Nickle v. Douglas*, 35 Q. B. 127. But in so far as the officer, whose duty it is made to do the acts within a limited time, is concerned, the Act may be construed as imperative. *Hunt v. Hibbs*, 5 H. & N. 126. "The general rule is, that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially." *Per Lord Coleridge, C. J., in Woodward v. Sarsons*, L. R. 10 C. P. 746.

(y) The Clerk is an officer of the Judge's Voters' List Court, and in some cases his neglect may be held to be the act of the Court, as in analogous cases at common law. It is in accordance with the principles of the common law, irrespective of the statute 17 Car. II. c. 8, that when ver the delay is the act of the Court, and not that of the party, the delay shall not prejudice, unless it can be shown that the

24. In case the Clerk of any Municipality fails to perform any of the duties aforesaid, the Clerk of the Peace shall forthwith apply (Form 21) summarily to the County Judge or the Junior or acting Judge of the County Court for the County within which such Municipality is situate, to enforce the performance of the same.

Provision in case Clerk of Municipality fails to perform duties.

Form 21.

2. The application may also be made by any person entitled to be named as an elector on the list in respect of which the application is made.

Elector may apply.

3. The Judge shall, on such application, require (Form 22) the Clerk of the Municipality, and any other person he sees fit, to appear before him and produce the Assessment Roll, and any documents relating thereto, or to the list in respect to which the application is made, and to submit to such examination on oath as may be required of him or them, and the Judge shall thereupon make such orders and give such directions as he may deem necessary or proper for the purposes aforesaid. (z)

Judge may require Clerk or other person to appear and submit to examination, &c.

Form 22.

other party would be prejudiced. Broom's *Legal Maxims*, 87. Where the delay in amending a writ of summons, within the statutory period, is the act of the officer of the Court, the writ will be amended *nunc pro tunc*. *Nazer v. Wade*, 1 B. & S. 728; *Evans v. Jones*, 2 B. & S. 45. But see *Grace v. Clinch*, 4 Q. B. 606, s. c., 3 G. & D. 591; *Llandebig v. Llandyfydog*, 15 L. J. M. C. 92. "We cannot suppose that the Legislature intended that if the Clerk omitted any of those things which he is directed to do,—such as making out the list alphabetically, or omitting to post up a copy in his office, or transmitting a less number of copies to some of the parties than the Act requires,—that the Judge could not proceed to revise the list on complaint being made under the statute. All the proceedings relative to the Clerk are merely directory with a view to notifying the electors of the state of the lists; and when, as in this case, such notification was effectually given, and the plain object and general intention of the statute has been in fact complied with, it would be the duty of the Judge to proceed with the revising." *Per Morrison, J., Revision of Goderich Voters' Lists*, 1874, 6 Pr. R. 215.

(z) By the English Parliamentary Electors' Registration Act,

Liability of
Clerk for
costs.

4. The Clerk of the Municipality shall be personally liable for and shall pay the costs of the proceedings, unless on some special grounds the Judge shall see fit to order otherwise, and in such special case the costs shall be in the discretion of the Judge.

Judge's
order not to
release Clerk
from penalty
under s. 25.

5. Such proceedings and such order of the Judge shall not in anywise exonerate or release the Clerk from liability to the penalty hereinafter imposed. 39 V. c. 11, s. 11.

Penalty on
Clerk for
neglect, &c.

25. If any Clerk of a Municipality omits, neglects or refuses to complete the Voters' Lists, or to perform any of the duties hereinbefore required of him for his Municipality, such Clerk, for each such omission, neglect or refusal, shall incur a penalty of two hundred dollars. (a) 39 V. c. 11, s. 24.

(31 & 32 Vic. c. 58,) the revising barrister has power (s. 29) to summon the overseers or other persons having the custody of the rate-roll to produce the same before him; and by the Registration of Voters' Act, (6 Vic. c. 19,) the revising barrister has power (s. 50) to impose a fine of not less than £1, nor exceeding £5, on any assessor, collector, or overseer, wilfully refusing or neglecting to attend when summoned; and also to impose a similar fine for any wilful refusal or neglect to make out the list; or to insert the name of any person claiming to be a voter; or to omit the name of any person duly qualified; or to insert the name of any person not duly qualified; or to neglect to publish any notice or list at the time and in the manner required by the Act, &c. (S. 51.) This is in addition to an action for penalties. Under this Act, and the *Voters' Lists Finality Act*, similar offences render the guilty officers subject to penalties of \$200 or \$2,000, which may be sued for "in any Court having jurisdiction to the amount of the penalty in cases of simple contract." (R. S. O. c. 8, s. 3, sub-s. 29).

(a) Under the Reform Act of 1832, each overseer is liable in a separate action to the penalty for non-compliance with the requirements of the Act. *King v. Share*, 3 Q. B. 31. Where an action was brought against an overseer for wilfully inserting in the list of voters, the names of persons not entitled to be so entered: *Held*, not necessary to prove a corrupt intent. *Tarr v. McGahey*, 7 C. & P. 380. The omission of an overseer to sign the burgess roll, subjects him to a penalty, although his neglect was neither wilful nor corrupt. *King v.*

26. If any Clerk of a Municipality, or Clerk of the Peace, or any other person wilfully makes any alteration, omission or insertion, or in any way wilfully falsifies any such certified list or copy, or permits the same to be done, every such person shall incur a penalty of two thousand dollars. 32 V. c. 21, s. 11; 39 V. c. 11, s. 25.

Clerks, &c., wilfully falsifying lists to incur a penalty.

27. No person shall make, execute, accept or become a party to any lease, deed or other instrument, or become a party to any verbal arrangement, whereby a colourable interest in any land, house or tenement is conferred, in order to qualify any person to vote at an election; (b) and any person violating the provisions

Colourable transfer of property in order to confer vote.

Burrell, 12 A. & E. 460. But his neglect to sign such lists will not render them invalid, if it appear that the electors had due notice of the lists. *Morgan v. Perry*, 17 C. B. 334.

(b) See note (d) to s. 17, page 39. The offence of "occasionality" or "splitting votes" may be of two kinds: (1) The first kind of occasionality is that which does not contain what is called legal fraud, yet is deemed to be a fraud upon the law of Parliament, viz., where that, to which the right of voting is attached, is obtained sincerely and *bona fide*, but upon the eve of a particular election, and for the express and only purpose of enabling the person who acquires it to give a vote at that election. (2) The second kind of occasionality is so connected with fraud that they are convertible terms. It consists of an illusory and pretended grant, for the purpose of voting merely, of that which in fact never passes from one party to the other. 1 *Stephens's Law of Elections*, 417; *Rogers's Law of Elections*, 177. Several statutes, called the "Splitting Acts," were passed to meet the evil, (from 7 & 8 Wm. III. c. 25, Lord Somers's Act, to 53 Geo. III., c. 49); by which all conveyances of land, made in order to multiply voices, or to split and divide the interest in any houses or lands, among several persons, to enable them to vote at elections, were declared void. One W. G. contracted with A. for the purchase of a house, and afterwards sold it to B. and five others in equal shares. A. conveyed direct to B. and the five others, the purchase money being paid through W. G., whose object was to increase the number of voters. B. and the others purchased *bona fide*. They knew, however, they were to gain votes in the constituency, but there was no stipulation that they were to vote in any particular way, or in support of any particular interest.

Penalty for committing, or inducing, the offence.

of this section, besides being liable to any other penalty prescribed in that behalf, shall incur a penalty of one hundred dollars, and any person who induces, or attempts to induce another to commit an offence under this section, shall incur a like penalty. (c) 39 V. c. 11, s. 26. See also *Rev. Stat.* c. 10, s. 170.

It was objected that the conveyance was void under the "Splitting Acts." *Held*, that to make the conveyance void, the seller must be a party or privy to the illegal object of the conveyance; that W. G. was not the seller, for it did not appear that he had anything to convey. *Marshall v. Bown*, 7 M. & Gr. 188, s. c., 8 Scott N. R. 889. See also *Hoyland v. Bremner*, 2 C. B. 84. A conveyance of land by one vendor to several purchasers, for a *bonâ fide* consideration is valid, although the avowed object of the vendor is to multiply, and that of the purchaser to acquire, the right of voting in a constituency. *Alexander v. Newman*, 2 C. B. 122; *Beswick v. Ashworth*, *Ibid.* 152. Conveyances made void by 7 & 8 Wm. III., c. 25, are such only as are void at common law; that is to say, conveyances meant not to transfer any real interest in land, but pretended and fictitious, and made for the purpose of multiplying voices only for an election. *Riley v. Crossley*, 2 C. B. 146; *Thorniley v. Aspland*, *Ibid.* 160. When the father of the voter conveyed certain lands to him and his brother, in consideration of natural love and affection, and although it appeared that one object was to make provision for the sons, the principal object was to entitle them to vote; and that the father occupied the land since the date of the deed, and paid no rent to his sons. The revising barrister did not find, either way, whether the transaction was fraudulent. *Held*, (1) that whether or not there was fraud in the making of a grant, is a question of fact which must, in all cases, be decided by the revising barrister, and as he had formed no conclusion on the question of fraud, the Court would not infer it; and (2) that the law acknowledged the consideration of natural love and affection in the case of a conveyance to a child, to be as good, to raise a use, as a pecuniary consideration between strangers. *Newton v. Hargreaves*, 2 C. B. 163; *Newton v. Overseers of Moberley*, *Ibid.* 203; *Newton v. Overseers of Crowley*, *Ibid.* 207.

(c) This section appears in the *Election Act*, s. 170. By s. 171 of the same Act it is provided that if lands are conveyed fraudulently, and for the purpose of giving any person a qualification to vote, and if such person votes on such lands, he shall incur a penalty of \$200, and the conveyance shall be valid, and every agreement to re-convey shall be null and

28. The penalties mentioned in the three next preceding sections may be recovered with costs of suit by any person suing for the same in any Court of competent jurisdiction. (*d*) 39 V. c. 11, s. 27. Recovery of penalties.

29. To prevent the creation of false votes, where any person claims to be assessed, or claims that any other person should be assessed, as owner or occupant of any parcel of land, or as possessing the income which entitles him to vote in the Municipality at an election and the Assessor has reason to suspect that the person so claiming, or for whom the claim is made, has not a just right to be so assessed, it shall be the duty of the Assessor to make reasonable enquiries (*e*) before assess- Assessor to make enquiries before assessing persons claiming to be assessed.

void. Conveyances and agreements made for the purpose of giving a temporary qualification, being against public policy are void. *Langlois v. Baby*, 10 Gr. 358. Such conveyances must fall within the same category as a conveyance to enable a man to sit in Parliament, but intended to convey no beneficial interest. *Per Spragge, V. C., Ibid.* What is against public law, is against public policy. *Per VanKoughnet, C., Ibid.* 11 Gr. 1. See also *Emes v. Barber*, 15 Gr. 679.

(*d*) "I should say that Parliament cannot trust enforcing penalties through juries. If they choose to give the power to magistrates, in the same way as they have entrusted to the Judges the trial of those election petitions, you may get it done, but you will never effect the levying of penalties through juries for breaches of the election law." *Per Martin, B., Committee on Parliamentary and Municipal Elections, (1869,) p. 429.* "All my experience has certainly led me to the conclusion, and I see that Mr. Baron Martin and Mr. Justice Willes, state the same thing, that men disregard those penalties; that they are not deterring at all; and that they very justly think they will not be put in practice; no one will sue them for penalties; no one will indict them for a misdemeanor; and they produce no effect at all." *Per Blackburn, J., Ibid. p. 508.* When punishment is brought within reasonable limits, it is understood that it will be enforced; and therefore the act is abstained from. The certainty of the penalty being incurred, tends to diminish the offence, p. 49.

(*e*) "When an assessor has reasonable notice, before he returns his roll, that a change in occupancy has been made,—and he omits to make the necessary changes, it may properly be considered, when the assessor fails to do this, that he has

ing such person. 39 V. c. 11, s. 28. *See also Rev. Stat. c. 180, s. 40.*

Penalty on assessor for wrongfully assessing or omitting to assess.

30. Any Assessor who wilfully and improperly inserts any name in the Assessment Roll, or assesses any person at too high an amount, with intent in either case to give to any person not entitled thereto, an apparent right of voting at any election, or who wilfully inserts any fictitious name in the Assessment Roll, or who wilfully and improperly omits any name from the Assessment Roll, or assesses any person at too low an amount, with intent in either case to deprive any person of his right to vote, shall, upon conviction thereof before a Court of competent jurisdiction, be liable to a fine not exceeding two hundred dollars, and to imprisonment until the fine is paid, or to imprisonment in the Common Gaol of the County or City, for a period not exceeding six months, or to both such fine and imprisonment, in the discretion of the Court. (*f*) 39 V. c. 11, s. 29.

Clerks of the Peace and of municipalities to fur-

31. The Clerk of the Peace and the Clerk of any Municipality having the custody of the list of voters of any Municipality or part of any Municipality or place,

wrongfully refused to insert the proper name on the roll." *Per* Richards, C. J., in *Re McCullough and the Judge of Leeds and Grenville*, 35 Q. B. 452. If the notice of the overseer is distinctly drawn to particular names, he has the opportunity of correcting his list, and he is bound to do so. *Per* Lord Denman, C. J., in *Tarr v. McGahey*, 7 C. & P. 385.

(*f*) This section applies to fraudulent assessments for the purpose of making votes, and may be read as a corollary to s. 194 of the *Assessment Act*, which imposes a penalty on the assessor for making fraudulent assessments. "An assessor violating this section is liable not only to an action for the penalties above prescribed, but also to an indictment for a misdemeanor. These wilful and *mala fide* acts and omissions are evidently to be treated as indictable offences." *Per* Hagarty, C. J., in *Regina v. Snider*, 23 C. P. 336. Any wilful contravention of any Act of the Legislature of any of the Provinces within Canada, which is not made an offence of some other kind, shall be a misdemeanor and punishable accordingly. 31 Vic. c. 71, s. 3, Can.

shall furnish a certified copy of such list, then last revised and corrected, or of any of the parts thereof, to any person who may require such copy or part, on being paid for the same by such person at the rate of four cents for every ten voters whose names are on such list or part: the said officers may furnish printed copies, for each of which they shall be entitled to receive six cents instead of the fee aforesaid; (g) and the officers shall verify any alterations made therein, by writing their initials in close proximity thereto. If the alterations or interlineations exceed one hundred, it shall be the duty of the said officers to furnish written copies.

nish copies
of last re-
vised voters'
list.

Fees for such
copies.

2. For each copy of the Voters' List or of any of the parts thereof furnished to the Returning Officer, according to Form 8 in Schedule A to "*The Election Act*," or according to Schedule C to "*The Municipal Act*," the Clerk of the Peace furnishing the same shall be entitled to receive the sum of six cents for every ten voters whose names are on such lists or part, as the case may be. 39 V. c. 11, s. 23; 40 V. c. 12, s. 10.

Fees to Clerk
of the Peace
for copy of
voters' lists.
See Rev.
Stat. c. 10, s.
56, or c. 174,
ss. 23, 120.

32. The Board of County Judges may, if requested so to do by the Lieutenant-Governor, frame Rules and Forms of procedure for the purpose of better carrying this Act into effect; (h) and such Rules and Forms shall, after being approved of by the Lieutenant-Governor in Council, have the same effect and force as if they formed part of this Act. 39 V. c. 11, s. 22.

Board of
County
Judges may
make rules.

(g) The fees to be paid are: (1) for a certified copy of the revised and corrected list, four cents for every ten voters; or (2) for a printed copy of list, six cents per pamphlet. Upon tender of the amount specified it is made the duty of the Clerk to furnish the copies required. By 41 Vic. c. 21, s. 10, it is the duty of the Clerk to allow any voter, or the agent of any voter, to inspect and take copies of or extracts from the Assessment Rolls, Voters' Lists, notices, complaints, &c., in his office.

(h) The "Board of County Judges" was originally appointed to frame rules for Division Courts. R. S. O. c. 47, ss. 237, 238. No rules or forms have been promulgated under this section.

Words
"Household-
er," &c., on
roll how to
be entered
on list.

33. The words Householder (H), Freeholder (F), and Tenant (T), appearing on the Assessment Roll pursuant to the Assessment Act, shall, for the purposes of this Act, be held to also mean respectively Occupant (Oc.), Owner (O), or Tenant, (T), (i) and shall be so entered in the Voters' List by the Clerk of the Municipality. 39 V. c. 11, s. 30. *See Rev. Stat. c. 180, s. 18.*

Forms given
in this Act
may be used.

34. In carrying into effect the provisions of this Act, the forms set forth in the Schedule hereto may be used, and the same, or forms to the like effect, shall be deemed sufficient (j) for the purposes mentioned in the said Schedule. (k) 39 V. c. 11, s. 30.

(i) Words are terms of art and ought to be distinctly explained. Common words, therefore, ought to be used in their common acceptation, and when they have different acceptations in common language, these, when it is necessary, ought to be defined. It is sufficient to define words that are uncommon, or that are used in an uncommon meaning. Reid's *Intellectual Powers*, 291.

(j) When a statute expressly provides that a thing is to be done in a given form, the statute ought to be followed. Harrison's *Municipal Manual*, 238. The forms here given, or to the like effect, shall be deemed sufficient. The English Ballot Act (35 & 36 Vic. c. 33) provides that "the schedules, and notes thereto, and directions therein, shall be construed and have effect as part of the Act," and in the schedule it was stated that "the forms contained in the schedule, or forms as nearly resembling the same as circumstances will admit, shall be used." At an election held under this Act, the Returning Officer did not observe the forms provided; and some of the electors marked their ballots with stars, single strokes or crosses, and marks to the left of the ballot papers: *Held*, (1) That the breach by the Returning Officer of the directions in the rules to the Act, which did not effect the result of the election, did not render the election void. (2) That if the ballot papers were so marked as to shew how the voters intended to vote, the non-observance of the form of marking given in the schedule, did not render the ballot void. *Woodward v. Sarsons*, L. R. 10 C. P. 733. By the general rule mentioned (note (z), p. 46), it would be necessary that the absolute enactment, which is, that the paper should be marked secretly, should be obeyed strictly; but it would be sufficient that the manner of marking the paper should be obeyed substantially. If these two enactments be so obeyed, there is no material breach of the Act. *Per Lord Coleridge, C. J., Ibid* 747. The Ontario Ballot Act differs from the above; not so the Canada Act, 41 Vic.

(k) The forms will be found in the Appendix.

An Act to give finality to Voters' Lists and for other purposes.

41 VICTORIA, CHAPTER 21.

Short title, s. 1.	Judge to revise lists within two months after complaint, s. 8.
Interpretation, s. 2.	Farmers' sons to be assessed without request, s. 9.
Certified Voters' List, conclusive as to right to vote, with exceptions, s. 3.	Clerk to allow inspection and copies of documents, s. 10.
Revision of Voters' Lists of 1877, s. 4.	Opinions from Court of Appeal, s. 11.
Proceedings on such revision, s. 5.	Clerk to give copies of lists to Returning Officers, s. 12.
Duty of Judge on such revision, s. 6.	Penalties, s. 14.
Former lists superseded, s. 6, sub-s. 3.	Clerk's fees of Court, s. 15.
Lists of 1877, valid for elections in certain cases, s. 7.	Constables fees of Court, s. 16.
	Payable by Municipality, s. 17.

[Assented to 7th March, 1873].

HER Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as "*The Voters' Lists* Short title. *Finality Act.*" (a)

2. In this Act, unless there is something in the con- Interpretation. text repugnant to such a construction: (b)

(a) See note (b), page 2.

(b) The first Act giving a legislative interpretation to terms used in statutes was passed in 1837 (Sir J. B. Robinson's Act) entitled *An Act to supply by a general law certain forms of enactment in common use, which may render it unnecessary to repeat the same in the Acts to be hereinafter passed.* (7 Wm. IV. c. 14.) The second Act was passed in 1849 (Mr. Lealie's Act), entitled *An Act for putting a legislative interpretation upon certain terms in Acts of Parliament, and for rendering it unnecessary to repeat certain provisions and expressions therein, and for ascertaining the date and commencement*

Election;
To Vote;
Corrupt

1. The word "Election," (c) the words "To Vote," (d) the words "Corrupt Practices," (e) and the words

thereof, and for other purposes. (12 V. c. 10.) These acts were incorporated in C. S. U. C. c. 2, and C. S. C. c. 5; and in 1868 the clauses with amendments were adopted in Ontario in the *Act respecting the Statutes*, 31 Vic. c. 1, which is now the *Interpretation Act* (R. S. O. c. 1). The only general Act in England for a similar purpose was passed in 1850 (Lord Brougham's Act), entitled *An Act for shortening the language used in Acts of Parliament*. (13 & 14 Vic. c. 21.) See Chollerton v. Lings, L. R. 4 C. P. 374, s. c., 38 L. J. C. P. 25.

(c) "Election" shall mean an election of a member to serve in the Legislative Assembly. (R. S. O. c. 10, s. 2, sub-s. 7.)

(d) "To vote" shall mean to vote at an election of a member to serve in the Legislative Assembly. (*Ibid.* sub-s. 8.)

(e) "Corrupt Practices" shall mean bribery, (R. S. O. c. 10, ss. 149, 150), treating, (*Ibid.* ss. 151-3), and undue influence, (s. 155), or any of such offences as defined by this (c. 10) or any other Act of the Legislature, or recognized by the common law of the Parliament of England; furnishing entertainment to meetings of electors (*Ibid.* s. 151), hiring vehicles (*Ibid.* s. 154), personation (*Ibid.* s. 156), and selling or giving liquor at taverns on polling day during the hours appointed for polling. (*Ibid.* s. 157, s. 2, sub-s. 11). The terms used in the earlier statutes were "bribery and corruption," 2 Geo. II., c. 24, Bribery Act), and "corrupt practices," 19 Geo. III, c. 118).

(1) *Bribery* is *muneribus incitare vel illicitere*. Chambers's *Dictionary of Elections*, 51. The offence has been thus defined: Whenever a person is bound by law to act without any view to his own private emolument, and another, by a corrupt contract, engages such person, on condition of a payment or promise of money or other lucrative consideration, to act in a manner which he shall prescribe, both parties are by virtue of such contract guilty of bribery. *St. Ives Election*, 2 Doug. El. Cas. 195. It is the offering of money or money's worth with the view of influencing a vote. It must be corrupt—i. e., to influence votes. *Cheltenham Election*, 1 O. & H. 65. To produce that result which the Legislature intended to forbid. *Wallingham Election*, 1 O. & H. 60. Contrary to the intention of the Act, with a motive or intention by means of it to produce an effect upon the election, not going so far as bribery, but with a motive thereby to influence the election." *Hereford Election*, Judgments 109. Any offer of money or money's worth is equally forbidden: "It cannot be supposed that an offer to bribe is not as bad as the actual payment of money. It is a legal offence." *Per Willes, J., Coventry Election*, 1 O. & H.

"Farmers' Son," shall respectively have the meaning given thereto by section two of "*The Election Act of Ontario*;"

Practises;
Farmers'
Son.

107. "A promise or offer to cause a workman or other person to be no loser by his coming to vote comes within the meaning of the Act, and is an act of bribery and corruption." *Staleybridge Election*, 1 O. & H. 67; *Simpson v. Yeend*, L. R. 4 Q. B. 626, s. c., 10 B. & S. 752. An offer of reward in any shape, will constitute the offence of bribery. *Halton Election*, 11 O. L. J. N. S. 273. Corruptly giving leave to shoot rabbits. *Launceston Election*, 2 O. & H. 129. The payment of money to take a voter out of the custody of the sheriff, to enable him to vote, is bribery. *Londonderry Election*, 1 O. & H. 275. So the payment of voter's taxes to induce him to vote. *Cheltenham Election*, 1 O. & H. 63. Must be done corruptly. *Oldham Election*, *Ibid.* 164; *Wigan Election*, *Ibid.* 189. And an offer to procure a seat in the Town Council for a voter was held to be bribery. *Waterford Election*, 2 O. & H. 25. So money given to a disqualified voter is within the terms of the Act. *Guilford Election*, 1 O. & H. 14; *Lichfield Election*, *Ibid.* 29. Giving money to forbear to vote, is an offence within the Bribery Act, and subjects to the penalty, although the party actually voted for the opponent, or did not vote. *Bush v. Ralling*, Sayer 289; *Sulston v. Norton*, 3 Burr. 1235; *Simeon on Elections*, 207. It is immaterial whether the party corrupted had a right to vote, as the corrupter thought he had, and the other claimed it. *Lilley v. Corne*, 1 Selw. N. P. 647, n. It will make no difference in the corrupter's offence whether the voter agrees to the corrupt bargain, or professedly assents, intending never to fulfil his part of the transaction; or indignantly rejects it. *Henslow v. Fawcett*, 3 A. & E. 51; *Harding v. Stokes*, 2 M. & W. 233. The voter is guilty of bribery if he asks, receives, or takes; or agrees, or contracts for any money, &c., to give, or to forbear to give, his vote. The candidate is guilty of bribery if he by any gift or reward corrupts, or procures, any person to give or refuse his vote. *Barnstable Election*, 1 Peck. 91. The offer, in order to become criminal, need not be made to the voter himself. Clerk's *Law of Elections*, 79. Wherever it is a crime to give, it is a crime to take; they are reciprocal. The attempt is a crime, and it is complete on his side who offers it. *Rex v. Vaughan*, 4 Burr. 2501; *Rex v. Plympton*, 2 Ld. Ray. 1377; *Ward v. Broughton*, 3 V. & B. 173; *Huntingtower v. Gardiner*. 1 B. & C. 297. The payment by a respondent through his election agent of an innkeeper's account, to the amount of \$362 30, "for expenses of orateurs during the election," in the absence of any proof as to the names and occupations

Voter.

2. The word "Voter" shall mean a person entitled to vote, or to be named in the Voters' List;

of, or the services rendered by, the persons styled *orateurs*; and payments moreover not included in the statement of expenses required by law, were held corrupt practices on the part of the respondent. *Chambly Election*, 19 L. C. Jur. 86; afterwards affirmed *Ibid*, 332. The gift or loan of money by a respondent to a voter, pending the contestation of the first election, is a corrupt practice falling with sec. 92 of Election Act of 1874, *Ibid*. See further *South Grey Election*, 8 C. L. J. N. S. 17; *East Toronto Election*, *Ibid*. 113; *South Renfrew Election*, 10 C. L. J. N. S. 286; *North Simcoe Election*, *Ibid*. 232; *London Election*, *Ibid*. 281; s. c., 24 C. P. 434; *Cornwall Election*, 10 C. L. J. N. S. 313; *Niagara Election*, *Ibid*. 317; *South Huron Election*, 24 C. P. 487; *Brockville Election*, 32 Q. B. 132; *Kingston Election*, 11 C. L. J. N. S. 19; *Halton Election*, *Ibid*. 273; *Welland Election*, *Ibid*. 273; *South Oxford Election*, *Ibid*. 161; *East Northumberland Election*, *Ibid*. 328; *Lincoln Election*, (1st) 12 C. L. J. N. S. 161. Conflicting decisions have arisen respecting "bets" or "wagers." "If I lay a wager of five guineas with A that he does not vote for me, it is a bribe." *Anon.*, Lofft 552. Where a bet was laid upon the result of a decision in the House of Lords, Lord Mansfield, C. J., said: "If the wager had been made with one of the Judges, or one of the Lords, it would have been a bribe." *Jones v. Randall*, 1 Cowp. 39. A bet on the result of an election is illegal, and will not be enforced in the Courts. *Allen v. Hearn*, 1 T. R. 56. From the moment the wager is laid both parties are fettered. It has an influence on the mind. It is therefore laying them under pecuniary influence. *Per* Lord Mansfield, C. J., *Ibid*. A voter bet £10 to £5 with another that B would not be elected; he made a bet of £1 with another, that D would beat B by 100 votes; £1 with another that D would beat B by 200 votes; and afterwards he made a bet of £1 he would win both his bets: *Held*, vote bad. *Worcester Election (Dutton's Case)*, K. & Omb. 254. A voter bet £5 with another person, not a voter, that B would beat E. After the bet, he and another voter went to E's committee rooms, and withdrew the promises they had made to vote for E. After the election he received his bet: *Held*, vote bad. *New Windsor Election (Bragg and Dyson's Cases)*, K. & O. 191. A and P as agents of R, a candidate, made several bets with the supporters of N, the opposing candidate, in this form, "I bet you \$5, or \$10, that you dare not vote for R." Several voters accepted the bet, and voted for R: *Held*, that such bets were acts of bribery. *Lincoln Election*, 1876. See also *Niagara*

3. The word "List," and the words "Voters' List," ^{List; Voters' List.} shall respectively mean the alphabetical list referred to

Election, 10 C. L. J. N. S. 317. *Sed contra*, *Monmouth Election*, K. & Omb. 416; *Youghall Election*, 4 F. & F. 404.

(2) *Treating*, for the purpose of influencing an election, was always an offence at common law as a *species* of bribery; the only difference being that the corrupting premium consisted of food, drink, or both. *Rogers's Election Law*, 366; *Hughes v. Marshall*, 2 C. & J. 118. But it may be doubted whether treating, in the sense of ingratiating, by mere hospitality, even to the extent of profusion, was struck at by the common law. *Lichfield Election*, 1 O. & H. 25. By a standing order of the House of Commons (21st October, 1678), and which may be taken to enunciate the common law of Parliament, it was ordained, "that if any person shall, at any time before the day of his election, give any person having vote at such election, any meat or drink, exceeding £10 in the whole, in any other place than his habitation for six months past, he shall be guilty of bribery, and, if proved, ineligible by it for such election." The Treating Act (7 Wm. III. c. 4), passed in 1696, is more comprehensive. "The greatest difference between the resolution and the statute consists in the evidence required of the facts; the former declares the facts alone, when *duly proved*, to be bribery and criminal; but the statute infers the guilt from the object and intention; the several acts must be done *in order to be elected*, before the penalty attaches, according to the words of the first section." *Ipswich Election*, note D, 1 Luders 69. A general system of treating, houses thrown open so that people could get drink without paying for it, all for the purpose of influencing votes, is contrary to the principle of the common law. *Bratford Election*, 1 O. & H. 41. The treating must be done with a corrupt intent. *Brecon (2) Election*, 1 O. & H. 121. So promise of refreshments *in futuro*. *Bodmin Election*, 1 O. & H. 124. If a publican supply drink to voters without orders, and the candidate subsequently pays him, such ratification would probably be equivalent to the original treating. *Per Willes, J., Committee on Parliamentary and Municipal Elections*, 445. The giving of a single pot of liquor to a single voter, intending thereby to gain the vote of that voter. *Tamworth Election*, Leigh & LeM. 22. Opening and supporting a house of public entertainment for the accommodation of the electors under 12 Vic. c. 27, s. 54. *North Wellington Election*, Jour. Leg. Assem. 1858, p. 68, 841. See also *Mottashed v. Rea*, 23 Q. B. 432; *South Grey Election*, 8 C. L. J. N. S. 17; *East Toronto Election*, *Ibid.* 113; *Brockville Election*, 32 Q. B. 132; *Kingston Election*, 11 C. L. J. N. S. 19; *North Victoria Election*, *Ibid.* 163, 37 Q. B. 234; *North Middlesex Election*, 12 C. L. J. N. S. 14.

R. S. O. c. 9. in section two of "*The Voters' Lists Act*," or in section four of the Act passed in the fortieth year of Her

(3) *Undue influence*, may be of two kinds. (1) Force or intimidation by mobs or riotous assemblies whereby the freedom of election is violated and persons are prevented from freely exercising their franchise, and the real political feeling of the constituency is not ascertained. An election carried by violence or force, or intimidation would, by the common law of Parliament, be avoided. *Cheltenham Election*, 1 O. & H. 64; *Longford*, 2 O. & H. 12; *Stafford Election*, Judgments, 295; *Staleybridge Election*, 1 O. & H. 72; *Galway Election*, 2 O. & H. 196; *Ferguson v. Adams*, 5 U. C. R. 194; *Wilde v. Bowen*, 37 Q. B. 504; (2) Influencing voters by appeals to their fears. This is defined to embrace almost every case of improper influence, whether by physical intimidation, clerical undue influence or otherwise. *Longford Election*, 2 O. & H. 16; *Galway Election*, 2 O. & H. 57, 196. Thus, if done with the intent to interfere with the free exercise of the franchise, whether by the removal of custom, or business, or employment. *Blackburn Election*, 20 L. J. N. S. 823. Expelling or wrongfully discharging voters shortly before or after a parliamentary election in consequence of their politics. *Ibid.* So if a landlord was to say to his tenant: "If you do not vote for so and so, I will turn you out of your house." *Regina v. Barnwell*, 5 W. R. 558. Where fellow servants or others, ill-treat one another, and expel one another from their society, or the common place of employment. *Blackburn Election*, 1 O. & H. 204. Abducting, or what is vulgarly called "bottling," a voter, and exercising any trick or fraud. Leigh and Le Marchant's *Law of Elections*, 32. So a voting card, or any fraudulent device to induce voters to believe that they could not vote for A., and that their vote would only be valid if they put a cross opposite the name of B. *Ibid.* 124. The issue of a circular containing a false statement as to how a candidate was inducing his friends to vote, is not within the act. *East Northumberland Election*, 11 C. L. J. N. S. 328. See also *Muskoka Election*, 12 C. L. J. N. S. 193. Sermons and threats by parish priests restraining the liberty of voters, by declaring that the electors who voted for a certain candidate would commit a sin, or incur ecclesiastical censures, or be deprived of the sacraments,—are corrupt practices. *Charlevoix Election*, 1 Sup. Ct. Can. 145; *Galway Election*, 2 O. & H. 196.

(4) *Entertainment to Meetings of Electors*. The former clause had the words, "with intent to promote the election of such candidate," but they were struck out by 36 Vic. ch. 2, s. 2. Where spirituous liquor was furnished by an agent of the respondent to a meeting of electors, assembled at a school-

Majesty's reign, and chaptered twelve, as the case ⁴⁰ V. c. 12. may be ;

house for the purpose of promoting the election: *Held*, a corrupt practice under the *Election Law* of 1868, s. 61, as amended by the *Election Act* of 1873. *Per* Gwynne, J., *West Wellington Election*, 11 Jour. Leg. Assem. Ont. p. 10. A meeting of electors was held in the town-hall, about a week before the polling day, for the purpose of promoting the election. After the meeting, a number of the electors who had attended the meeting, went to a tavern, where an agent of the respondent treated them, and the treating continued from 10 o'clock p.m., to 2 o'clock a.m.: *Held*, a corrupt practice, and that it avoided the election. *Per* Draper, C. J. A., *East Peterborough Election*, Sess. Papers Leg. Assem. Ont., 1875-6, No. 48, p. 23.

(5) *Hiring vehicles, or payment of travelling expenses.* The intention of the Legislature was, that voters should either walk to the poll or go in their own carriages. *Per* Martin, B., *Salford Election*, 1 O. & H. 135. See also *East Toronto Election*, 10 C. L. J. N. S. 248; *Cornwall Election*, *Ibid.* 313. The offer of paying travelling expenses conditional on the voter coming and voting, is an act of bribery. *Cooper v. Slade*, 6 H. Lds. Cas. 746; *Litchfield Election*, 1 O. & H. 28; *Stroud Election*, 1 O. & H. 179. And is so at common law. *Dublin Election*, 1 O. & H. 273. But not when a railway ticket is sent to the voter without conditions. *Bolton Election*, 2 O. & H. 144. The payment of a voter's expenses in going to the poll, is illegal though not intended as a bribe. *Lincoln Election*, (1st) 12 C. L. J. N. S. 161. See also *North Victoria Election*, 10 C. L. J. N. S. 217.

(6) *Personation*, by the English Act, 14 & 15 Vic. c. 100, s. 9, is felony. *Bushby's Election Law*, 82. See also as to cases of personation, *Oldham Election*, 1 O. & H. 162; *Gloucester Election*, 2 O. & H. 62.

(7) *Selling or giving liquor at taverns, &c., during polling hours.* The parties liable to disqualification for this offence, are tavern-keepers or persons acting for them in the tavern, or shop. *South Ontario Election*, 12 C. L. J. N. S. 216. *North Grey Election*, 11 C. L. J. N. S. 242; *South Essex Election*, 11 C. L. J. N. S. 247; *Lincoln Election*, (1st) 12 C. L. J. N. S. 161; *North Wentworth Election*, 11 C. L. J. N. S. 186; *Welland Election*, 11 Jour. Leg. Assem. Ont. p. 5. See also *Lincoln Election*, 1878, *Per* Patterson, J. A.

For the offence of corrupt practices at Parliamentary elections, the punishments are :—(1) A money penalty of \$200, to be recovered with full costs of suit, by any person who will sue for the same, by action of debt or information, in any Court

Scrutiny.

4. The word "scrutiny" (*g*) shall mean any scrutiny of the votes polled at an election within the meaning

of competent jurisdiction. (2) Disqualification for eight years next after the date of being found guilty, for being elected to, and of sitting in, the Legislative Assembly, and for being registered as a voter, or for holding any office, at the nomination of the Crown, or of the Lieutenant-Governor, or any Municipal office. (3) Avoidance of the election of a candidate where a corrupt practice has been committed by or with the actual knowledge or consent of the candidate. (4) Avoidance of the election where the corrupt practices have been committed by agents without the knowledge and consent of a candidate, and where the corrupt acts are not of such trifling nature or extent that the result cannot have been affected or supposed to have been affected by such acts, either alone or in connection with other illegal practices at the election. (5) Indictment for a misdemeanor for bribery, which is punishable by fine and imprisonment. By s. 166 of the Election Act, subsequent elections are to be considered as new elections, except as to personal acts (of corrupt practice) of candidates, and of their agents, done with the knowledge and consent of such candidates. So that corrupt practices of electors at the avoided election cannot be inquired into to invalidate the subsequent election, except as to acts above mentioned. The limitations of time for the enforcement of the punishment are: (1) Penalties,—suit to be commenced within one year next after the act committed, and not afterwards. (2) Disqualification,—proceedings to be taken at any time within the eight years, unless it be by action, suit or proceeding under the *Election Act*, and then such action, &c., to be commenced within one year next after the Act committed. (3) Avoidance of election,—petition to be presented within twenty-one days after the return to the Clerk of the Crown in Chancery, or within twenty-eight days after the date of a payment of money, or other act of bribery by the member, or on his account, or with his privity, since the return. (4) Indictment for misdemeanor,—at any time after the commission of the offence. The punishment for corrupt practices at municipal elections is a disqualification for voting at municipal elections for two years, and a penalty of \$20, and, if a candidate, disqualification for municipal election for two years.

(*g*) When the petition claims the seat for the unsuccessful candidate, alleging that he had in fact the majority of good and legal votes, and ought to have been returned as the member, the case proceeds on a scrutiny, or investigation, of the qualification of the votes polled at the election. The enquiry into each vote is a separate case. Voters, whose votes are attacked on

of sections seventy-two and the nine next succeeding sections of "*The Controverted Elections Act of Ontario*;" ^{R. S. O. c. 11, ss. 72-81.} and

5. The words "Clerk of the Peace," shall mean the Clerk of the Peace for, and the words "County Judge," shall mean the Judge of the County Court, for the County or Union of Counties within which lies the Municipality for or in respect of which the Voters' List is made.

3. Every Voters' List which under this Act, or under sections eleven or twelve (*h*) of "*The Voters' Lists Act*," or under sections six or eight of "*The Voters' Lists Act of 1876*," was during the twelve months next prior to the passing hereof, or is hereafter certified by the County Judge, shall, upon any scrutiny, be final and conclusive evidence of the right of all persons named therein to vote at any election at which such list was or could have been legally used; (*i*) except

a scrutiny, are looked upon as parties to the suit or petition. Clerk's *Law of Elections*, 463; Wolferstan's *Election Petitions*, 76; *Petersfield Election*, 3 Doug. El. Cas. 11; *Worcester Election*, *Ibid.* 276; *Ipswich Election*, K. & O. 387; *Great Grimsby Election*, 13 Com. Jour. 379; *Yorkshire Election*, 22 Com. Jour. 604. The scrutiny was formerly taken before the returning officer at the poll.

(*h*) See pages 32-34, and notes (*p*) to (*u*). These sections correspond with ss. 6 and 8 of the *Voters' List Act of 1876*.

(*i*) The English Registration of Voters' Act (6 Vic. c. 18, s. 98) gives a limited power to the election tribunals "to inquire into and decide upon the right to vote of any person, who being upon the register of voters in force at the time of such election shall have voted at such election; or, being upon such register, shall have tendered his vote at such election, (1) in case the name of such person shall have been (*a*) specially retained upon such register; or (*b*) inserted therein; or (*c*) expunged; or (*d*) omitted therefrom, by the express decision of the revising barrister, who shall have revised the lists from which such register shall have been formed"; also "upon the right to vote of any person who being upon such register shall have voted at such election, so far as the same may be disputed,

Exceptions:
(1) Corrupt
practices.

(1) Persons guilty of corrupt practices at or in respect of the election in question on such scrutiny, or since said list was certified by the County Judge as aforesaid ; (j)

(2) on the ground of legal incapacity at the time of his voting by virtue of any statute now or hereafter to be in force ; or (3) on the ground of any other legal incapacity at the time of his voting, which may have arisen subsequently to the expiration of the time for making out the list of voters." "But except in such cases, or on such grounds as aforesaid, the register of voters in force at the time of such election, shall, so far as regards the proceedings before such tribunal, be final and conclusive to all intents and purposes as to the right to vote, in such election, of every person who shall be upon such register." And in respect of cases decided by the Court of Common Pleas, under the Act, s. 66 enacts that "every judgment and decision of the said Court shall be final and conclusive in the case upon the point of law adjudicated upon, and shall be binding upon every election tribunal appointed for the trial of any petition complaining of an undue election or return of any member or members to serve in Parliament." The election tribunal and the Court of Common Pleas are thus constituted the appellate Courts from the decisions of the revising barrister. See *Ryder v. Hamilton*, L. R. 4 C. P. 559. Under the Ontario Act, there is no right of appeal, as in England ; and the only mode of reviewing the decision of the County Judge, is as stated in note (y) to s. 14 of the *Voters' List Act*, or as provided in s. 11, *post*. It may be noted here, that although the County Judge has jurisdiction to enquire into the right to vote, of persons disqualified by office, and of persons disqualified by corrupt practices,—which latter disqualification may be found either on a complaint before the Voters' List Court, or a conviction by the Election Court, or by the Court for the trial of illegal acts at elections, or by a Court of civil or criminal jurisdiction,—the non-application to strike off the names of voters guilty of such corrupt practices, and the consequent retention of their names on the Voters' Lists, allows them to vote as if duly qualified voters ; and their votes cannot thereafter be challenged on a scrutiny. But the non-application to strike off the names of persons disqualified by their offices, is no bar to the right to attack their votes on a scrutiny. See further note (p) page 23.

(j) In regard to the class of persons here excepted, the list would not be conclusive. The County Judge has jurisdiction to enquire into charges of corrupt practices against voters at prior elections, for the purpose of striking off their names from the Voters' List, if he finds the charge sustained ; but

(2) Persons who, at any time subsequently to said list being certified by the County Judge as aforesaid, are or have been non-resident either within the Municipality to which said list relates, or within the electoral district for which the election is being held, and who by reason thereof are, under the provisions of "*The Election Act of Ontario*," incompetent and disqualified to vote; (k)

(3) Persons who, being entered on said list in respect of income only, have not paid the municipal tax on such income within the time in that behalf required by the

he has no jurisdiction as to corrupt practices affecting a prospective election. The *Election Act* provides that "if on the trial of any election petition, it is proved that any corrupt practice has been committed by any elector voting at the election, his vote shall be null and void." (S. 163). A "bribed voter, who has voted, loses his status, and his vote is an absolute nullity; but until that is established, his vote must stand as it appears on the poll-book." *Per* Martin, B., in *Norwich Election*, 19 L. T. N. S. 621. "Any act committed previous to an election, with a view to influence a voter at the coming election, whether it is one, two, or three years before, is just as much bribery as if it was committed the day before the election, or the day of the election. Nay more, if a man commits bribery on the first week of a Parliament, and if he asks for the suffrages of that constituency in the last week of the seven years which precede the dissolution, that act committed six years before, can be given in evidence against him, and his seat would be forfeited." *Per* Keough, J., in *Sligo Election*, 1 O. & H. 302. But corrupt practices in another constituency is not a disqualification. *Montreal West Election*, 19 L. C. Jurist 113; *Lincoln Election*, *per* Draper, C. J. A., 1876. The votes of persons voting twice, and votes personated, may also be challenged on a scrutiny. But notwithstanding the finality clauses of this Act, persons wilfully voting without all the qualifications required by law to entitle them to vote, are subject to a penalty of \$200 each. (R. S. O. c. 10, s. 168.)

(k) The term, "Persons non-resident within the Municipality," refers to income voters. See notes (q) and (r), page 11, and the *Election Act*, s. 7, *secondly*. "Non-resident within the electoral district." This includes voters on real property and farmers' sons. See note (g), page 11, and the *Election Act*, s. 7, *firstly and thirdly*.

sub-sections of section seven of "*The Election Act of Ontario*;" (l) and

(6) Disqualified persons.

(4) Persons who, under sections four, (m) five, (n) and six, (o) of "*The Election Act of Ontario*," are disqualified and incompetent to vote.

(l) The qualification respecting the payment of taxes by income voters, depends upon the following rules:—(1) If the collector's roll has been for over one month in the collector's hands, then the taxes for that year must have been paid before the date of the writ of election. (2) If such collector's roll has not been for one month in the collector's hands, or has not been delivered to the collector, then the taxes for the preceding year must have been paid on or before the 31st of December of the year for which they were levied.

(m) This section disqualifies the following officials: Judge of the Superior and County Courts, Custom House Officers, Clerks of the Peace, County Attorneys, Registrars, Sheriffs, Deputy Sheriffs, Deputy Clerks of the Crown, Crown Land Agents, Postmasters in Cities and Towns, and Officers engaged in the collection of duties in the nature of duties of excise. The disqualification of Officers of Excise and Customs dates from the reign of Wm. III., and the penalty for any such officer voting at a Parliamentary Election, was forfeiture of office, and incapacity thereafter to bear any office or place of trust under the Crown. See also note (m), pages 7-8.

(n) This section disqualifies Returning Officers, Election Clerks, and persons receiving or expecting to receive payment for acting as counsel, agent, attorney, or clerk at the election, or in any other capacity whatever, in reference thereto.

(o) This section applies to women. See note (h), page 5. Though a woman has no common law right to vote at elections of members of Parliament, she appears to be capable of holding many public offices;—such as Queen: "Queen regnant is she who holds the crown in her own right," (1 BL. Com. 219); Marshall, Great Chamberlain, and Champion of England (2 T. R. 397); Constable of England (3 Dyer 285b). Anne, Countess of Pembroke, held the office of hereditary Sheriff of Westmorland, and exercised it in person. At the Assizes of Appleby she sat with the Judges on the Bench, (Harg. n. Co. Litt. 326a). Lucy, Countess of Kent, was Returning Officer, and signed the indenture and return of the member for the County of York in 1412. And in 1415, Margaret, widow of Sir H. Vavaseur, also acted and signed a similar indenture. So Lady Elizabeth Copley made the return for the Borough

4. Notwithstanding anything in this or any other Act contained, any voters' list based upon the Assessment Roll of any Municipality for the year one thousand eight hundred and seventy-seven, (p) shall, at the

Voters' list
based on roll
of 1877.

of Gatton in 1553, and again in 1555. Dame Dorothy Packington also acted as Returning Officer, and made the return of the two members for Aylesbury in 1572, (Prynne's *Brev. Parl.* 152). And in 1628 the return of a member for Gatton was made by Mrs. Copley, *et omnes inhabitantes*, (1 Carew 245; Heywood on *Elections*, 160). "Possibly other instances may be found in early times, not only of women having voted, but also of their having assisted in the deliberations of the Legislature." (Per Bovill, C. J., *Manchester Borough Case*, L. R. 4 C. P. 383, citing Selden's *England's Epinomis*, c. 2. s. 19). Woman appear to have been burgesses of Lyme Regis in 1577, (2 Luters 13). She may be a commissioner of sewers, (Callis 202, 13 Vin. Abr. 159); governor of a workhouse, (2 Ld. Ray. 1014); sexton of a parish church in London, (2 Strange 1114, 13 Vin. Abr. 159); keeper of the prison of the gatehouse of the dean and chapter of Westminster, (3 Keb. 32, 2 Stra. 1114, 3 Salk. 2); governess of a workhouse at Chelmsford, (13 Vin. Abr. 159); custodian of a castle, (Cro. Jac. 18, 13 Vin. Abr. 159); constable, the office of which is in some respects judicial, (2 Hawk. P. C. f. 10, s. 36); gaoler, (2 T. R. 397); overseer of the poor, (2 T. R. 395). Women who were housekeepers and paid church and poor rates, were entitled to vote for a sexton, (2 Strange 1114). A *feme sole*, if she had a freehold, was said to be entitled to vote for a member of Parliament, (7 Mod. 264 and 271, cited L. R. 4 C. P. 399). Women may vote for churchwardens, (23 Gr. 49). "It might be more reasonable that one or more churchwardens should be women than men, one half the congregation are likely to be women, and a female overseer would be able to watch over their conduct, to counsel and advise them, better than men." (Per Proudfoot, V. C., *Ibid.*) In Municipal elections in England spinsters and unmarried women who are rated for property, are entitled to vote, but they lose that right on their marriage. Marriage is at common law a total disqualification, and a married woman, therefore, could not vote, nor exercise almost any public function, her existence for such purposes being merged in that of her husband. (L. R. 7 Q. B. 361.)

(p) "Voters' List based upon the Assessment Roll for 1877." This includes all Assessment Rolls prepared under the general provisions of the *Assessment Act* (R. S. O. c. 180). It may also be found to include Voters' Lists based upon the Assessment Rolls of cities and separate towns under s. 44 of that Act. That section gives power to such municipalities

Still subject
to revision.

R. S. O. c. 9,
s. 8.

S. 3 of this
Act not to
apply.

Express de-
cision of
County
Judge not to
be reviewed.

instance, and upon the complaint of any person entitled either to be entered on said list, or to vote, or be a voter, in the electoral district in which said Municipality is situate, be still subject to be revised and corrected by the County Judge to the extent and in the manner and upon and for all or any of the grounds mentioned in section eight and the sub-sections of section eight of "The Voters' Lists Act;" (q) and with respect to and upon the hearing and determination of any such complaint, none of the provisions of section three of this Act shall apply, nor shall any decision of the County Judge heretofore made, either under "The Voters' Lists Act," or any other Act, in regard to the right of any person to vote be, for any purpose whatsoever, considered or taken as final or conclusive; Provided always, that no such complaint shall be made or permitted under this section with respect to the right of any person to vote (r) or to be entered on the Voters' List, where such right has at any past revision of

to pass by-laws altering the ordinary dates, prescribed by the Act, but so that the final return by the Judge, on appeals to him from the Court of Revision, shall be made by the 31st December; and it then provides, "and the assessment so made and concluded may be adopted by the council of the following year, as the assessment on which the rate of taxation for said following year shall be levied; and in the year following the passing of the by-law, the council may adopt the assessment of the preceding year, as the basis of the assessment of that year." The Assessment Rolls, on which the taxation of 1878 is levied under sec. 44, were prepared, and finally revised and corrected during 1877.

(q) See pages 19-25 ante.

(r) This provision may be compared with s. 98 of the English Registration of Voters Act, 6 Vic. c. 18. The term "express decision," in that Act, has received judicial interpretation by Parliamentary Election Committees, and by the Election Courts. There must be a *bona fide* objection raised before the revising barrister to bring the case within the term "express decision." Rogers' *Law of Elections*, 565. Where the parties were present and prepared to argue the case, but the revising barrister stated that he would expunge and retain respectively the names of all who had been expunged or retained by the former revising barrister, and refused to hear evidence,

such list been enquired into and expressly decided

and inserted the names in his own handwriting: *Held* an express decision. *Wareham Election*, Wolf. & Dew 94. Where the decision of the revising barrister turned upon a preliminary point, as upon the validity of a notice of objection: *Held*, an express decision. *Bedford Election*, P. & K. 117. "Inasmuch as the vote of G. S. did actually become the subject of discussion before the revising barrister, that circumstance suffices to bring it within the jurisdiction of the Committee without determining whether the notice of objection was or was not perfect in form." *Ripon Election*, C. & R. 292; s. c., P. & K. 204. A voter was objected to before the revising barrister on an objection to the spelling of his name, but it was not proved that he was objected to on any other ground: *Held*, an express decision. *Oldham Election (Firth's Case)*, 1 O. & H. 155. Where a voter's name, duly objected to, was struck off by the revising barrister, owing to the non-attendance of such voter at the Revision Court: *Held*, an express decision. *Oldham Election (Harper's Case)*, 1 O. & H. 157. Where, after the notice of objection to the vote of C. was held bad by the revising barrister, and after he had so decided, his attention was called to the fact that similar notices had been given in a great many other cases, including B.'s case, but the names were not mentioned to him; and he was not informed of the objection to B.'s vote: *Held*, an express decision, that after deciding on C.'s case it was not necessary to get a formal decision on B.'s case to bring it within the rule. *Bewdley Election (Baker's Case)*, 1 O. & H. 177. Where two voters were objected to, and after hearing evidence and the parties on both sides, the revising barrister decided that he would expunge the names, but before he actually erased them an arrangement was entered into between the parties, by which the objections were withdrawn, and the names retained on the list: *Held*, not an express decision. *1st Harwich Election*, 1 P. R. & D. 303. See also *Oldham Election (Hester's Case)*, 1 O. & H. 156. Where a voter had been objected to, and the revising barrister decided to expunge the name, but by mistake it was retained: *Held*, not an express decision. *Huntingdon Election (Owen's Case)*, Wolf. & Dew 198. Where a voter's name had been struck off by the mistake of the revising barrister: *Held*, not an express decision. *Oldham Election (Ogden's Case)*, 1 O. & H. 156. See also *Ex parte Allen*, 6 C. B. 334. Where a voter's name had been struck off by the revising barrister, but the voter had received no notice of the objection against his vote: *Held*, not an express decision. *Oldham Election, (Lees' Case)*, 1 O. & H. 156. The revising barrister has no jurisdiction to strike off the name of any voter unless the name has been duly objected to under the Act.

by the County Judge. (s)

Smith v. James, L. R. 1 C. P. 138. Where the names of certain occupiers of houses in a borough were placed on the list of voters, although the rates in respect of their houses was made upon and paid by their landlord; and their names did not appear on the rate roll, but no objection to their right to vote was taken before the revising barrister, and he certified the lists in the usual way: *Held*, on a special case, not an express decision; and as such occupiers had voted, although not rated as required by law, no objection to their votes could be taken on an election petition, the register of voters being conclusive evidence of their right to vote. *New Sarum Election (Ryder v. Hamilton)*, L. R. 4 C. P. 559. The decisions of the election committees upon the point under discussion were clearly right. *Per Brett, J., Ibid.* Unless we can clearly see that a continuous course of decisions of election committees upon a given point, has been wrong, we ought not to decide contrary to these decisions. *Ibid.* See further on these points note (m), page 32, and note (i), page 63.

(s) An "express decision" by the County Judge, on a former revision, is here limited to cases where the right to vote has been *inquired into and expressly decided*. Such decisions cannot be reviewed under this clause. Where the same question has been once judicially determined between the parties it is *res judicata*. The maxim, "a man shall not be twice vexed for the same cause," applies. *Broom's Legal Maxims*, 296; *Greathead v. Bromley*, 7 T. R. 455; *Lord Bagot v. Williams*, 3 B. & C. 235; *Doe dem. Strode v. Seaton*, 2 Cr. M. & Ros. 728; *Place v. Potts*, 8 Ex. 710, 23 L. J. Ex. 348, 5 H. Lds. Cas. 388; *Tilt v. Dickson*, 4 C. B. 736; *Ferris v. Chesterfield*, 10 C. P. 272. But the tribunal must have jurisdiction, and be properly constituted, or the whole proceeding will be *coram non jure*; and so especially where the tribunal is of limited jurisdiction, and its sittings are regulated by statute. The irregular holding of the revising barristers' Courts has been held to vitiate the votes registered thereat. *Rogers' Law of Elections*, 555. Where the overseers of a certain parish did not appear before the revising barrister on the day appointed, and the barrister, at the close of the day, rose, without adjourning the Court, but afterwards wrote a letter to the overseers appointing a day for another sitting, beyond the time allowed by the Act, at which sitting the list of voters was produced, and no objections having been made to any name, the revising barrister signed the list. On a scrutiny, all the voters on such list were struck off the poll. *Shaftesbury Election*, Fal. & Fitz. 374. If there is irregularity in the manner in which the votes are registered, such irregularity will be investigated. *Cork Election*, K. & Omb. 279.

5. The proceedings upon and with respect to any complaint made under the provisions of the next preceding section of this Act shall be as follows : Proceedings on complaint as to list on roll of 1877.

(1) The person making the same shall, on or before the fifteenth day of May next after the passing of this Act, give notice thereof as nearly as may be in the manner and form provided by section nine of "*The Voters' Lists Act*;" (t) and the proceeding thereafter by, and the respective powers, duties, rights and liabilities of the Clerk or other proper officer of the Municipality, the County Judge, and all other persons and parties respectively, and the forms to be used shall, except where otherwise provided by this Act, be as nearly as may be as if said complaint were one duly made under and pursuant to said section nine; To be made by 15th May, 1878.
Powers of Judge and Clerk as in H. S. O. c. 9.

(2) The said Clerk, or other proper officer in that behalf, shall within five days after said fifteenth day of May, notify the County Judge of the number and nature of the complaints so made, (u) and thereupon it shall be the duty of the County Judge so to arrange and proceed, and to fix the sittings of the Court for the hearing of such complaints, (v) that every such complaint shall be heard and determined, and said list finally Clerk to notify County Judge.
Judge to fix sittings.

(t) For the grounds on which appeals may be made see the notes on pages 20-25, and see notes to s. 9, pages 26-30.

(u) This notice will not be required if no appeals are made; but if appeals are served upon the Clerk under sub-s. 1, then the notice to the Judge must be made not later than Monday, the 20th May. The *Voters' List Act* makes it the duty of the Clerk to notify the Judge "forthwith" (s. 11), and according to the Form 7. See note (r), page 33. The "five days" above prescribed may be taken to be the legislative definition of "forthwith" in the *Voters' List Act*.

(v) In arranging the dates of the sittings of the Voters' Lists Court, provision will have to be made for the sittings of the County Courts (except in the County of York) commencing on the 11th June, and for the term commencing on the 1st July; and for the term of the York County Court commencing on the 10th June, and for any additional County Court sittings.

List to be certified by 15 July, 1878. revised, corrected and certified under this Act, before the fifteenth day of July next after the passing hereof; (*w*)

Clerk to bring list and former corrections. (3) Said Clerk, or other proper officer, shall bring with him from among the records of his office and produce to and at the Court appointed for the hearing of said complaints, the copy of said list and any statement of changes therein heretofore certified by the County Judge, (*x*) or in lieu thereof shall bring and produce as aforesaid a true copy of the same list and statement or of either of them, as the case may be, certified to be correct by the Clerk of the Peace.

Duty of Judge on this revision. 6. Immediately after any list has, under the provisions of the two next preceding sections of this Act, been finally revised and corrected by the County Judge, he shall make, or cause to be made, and shall sign a statement in triplicate, setting forth the changes, if any, which he has made in the list, and shall certify in triplicate a corrected copy of the list, the forms for such statement and certificate to be, as nearly as may be,

To certify changes in triplicate.

(*w*) This clause, limiting the time for the revision of the Voters' Lists to the 15th July, while it may be considered as imperative on the Judge, must be read as merely directory so far as the public interests are concerned. *Nickle v. Douglas*, 35 Q. B. 141. The Judge is bound to proceed as expeditiously as his other duties will permit; but when once he has acquired the jurisdiction to revise,—by the service of notices of complaint on the Clerk, as above provided for,—any unavoidable delay beyond the date specified, by reason of other duties, will not oust his jurisdiction, nor render his proceedings in the Voters' List Court abortive. A return made after the date prescribed will be sufficient. *Regina v. Mayor of Rochester*, 7 E. & B. 910; *Hunt v. Hibbs*, 5 H. & N. 123. See note (*e*) to s. 8, *post*.

(*x*) The Clerk should have all necessary papers and documents arranged and ready for the Judge, so that no delay shall occur to prolong the limited time given for the revision of the lists. He should produce not only the formerly revised Voters' List and statement, but also the Assessment Roll, and the proceedings of the Court of Revision, and all proceedings, notices of complaint &c., filed or adjudicated upon, at the former sittings of the Voters' List Court.

the same as those referred to in section twelve of "*The R. S. O. c. s. 12. Voters' Lists Act.*" (y)

2. The County Judge shall retain one of such certified copies, and one statement, and shall forthwith deliver or transmit by post, registered, one of such certified copies and one statement to the Clerk of the Peace, (z) and one of such certified copies and one statement to the Clerk of the Municipality, to be kept by him among the records of his office ; (a) and

Judge to transmit the revised lists to the Clerks named.

3. Such last mentioned list and copies shall, for all purposes and in all respects, except as to any election the writ for which bears date on a date prior to the transmission or delivery under this section of said copy and statement to said Clerk of the Peace as aforesaid, supersede and be used, and stand in lieu of the list complained against and sought to be revised and corrected under said two next preceding sections of this Act, and thereafter except in respect of such an election as in this section mentioned, said list so complained against shall be null and void. (b)

New lists to supersede lists complained of, except as to elections prior to revision.

7. Any list hereafter corrected and certified by the Judge under sections four, five, and six of this Act, and actually transmitted or delivered to the Clerk of

Provision as to lists revised before or after date

(y) See p. 34 and Form 17.

(z) *I.e.*, Clerk of the Peace of the County or union of Counties within which the Municipality lies, for municipal purposes. See s. 12, sub-s. 2, of the *Voters' List Act*, p. 35, and s. 2, sub-s. 5, of this Act.

(a) Such lists thereupon become a final and conclusive register of the right of all persons named therein to vote at Parliamentary elections, except as stated in sub-s. 1, 2, 3, and 4, of s. 3, pages 63-6.

(b) If the writ of election is dated before the day on which the new lists are completely revised by the Judge, *i.e.*, before the day of the "transmission or delivery," the unrevised lists must be used at such election. But if the Judge is proceeding to revise the lists under this Act, the issue of a writ of election, will not oust his jurisdiction, nor affect his proceedings.

of writ for election.

R. S. O. c. 10,
and c. 9.

Elections
before the
revision of
list.

Judge to
revise and
certify
within two
months of
last day for
complaint.

the Peace under this Act on or before the day of the date of the writ for an election, shall, for all purposes, and within the meaning of "*The Election Act of Ontario*," be considered and taken as having been delivered or transmitted to the said Clerk of the Peace, under "*The Voters' List Act*," at least one month before the date of the writ for such election; (c) but in respect of any election the writ for which bears date on a day prior to such actual transmission or delivery, the proper list (d) to be used shall be the one which, if this Act has not been passed, could have been legally used thereat.

8. It shall hereafter be the duty of the County Judge so to arrange and proceed and so to fix the sittings of the Court for the hearing of complaints against or in respect of any Voters' List, that such complaints shall be heard and determined, and said list finally revised, corrected and certified under "*The Voters List Act*," within two months of the last day for making such complaints: (e) Provided always, that nothing in this

(c) In case any list from any Municipality has not been filed in the office of the Clerk of the Peace, as required by law, prior to the revision here provided for, the above section dispenses with the month's filing of such lists, in cases when the list is revised under this section of the Act.

(d) The "proper list," is the last list of voters certified by the Judge and delivered to the Clerk of the Peace, at least one month before the date of the writ to hold the election. R. S. O. c. 10, s. 72. Where the list of voters of a township was made up from the Assessment Roll of 1870, and was sworn to by the Clerk on the 13th August, 1870, but was not delivered to the Clerk of the Peace until the 17th March, 1871,—the list for 1869, having been delivered on the 19th August, 1869, and the writ of election being dated on the 25th February, 1871: *Held*, that the Voters' List of 1869 was the proper list to be used at the election. *Monck Election*, 32 Q. B. 147.

(e) This clause limiting the County Judge to two months for the revision of the Voters' Lists, must be read as merely directory. See note (w) to s. 5, page 72. When a statute is merely directory, a thing omitted to be done at the proper time may be allowed afterwards. *Rex v. Lowdale*, 1 Burr. 445. There is a known distinction between circumstances which are of the *essence* of the thing required to be done by

section contained, shall apply to any Voters' List ^{Provide as to ss. 4, 5, and 6 of this Act.} specially provided for by the provisions of section four, five, and six of this Act.

Act of Parliament, and clauses merely directory. The precise time in many cases is not of the *essence*. *Per* Lord Mansfield, C. J. *Ibid.* Where owing to the neglect of the Justices, the overseers were not appointed at the time fixed by statute, a mandamus was granted directing them to appoint them, there being no negative words "and at no other time" in the Act. *Rex v. Sparrow*, 2 Strange 1123. So a mandamus was granted to appoint overseers in an extraparochial place after the time had expired. *Rex v. Inhabitants of Rufford*, 1 Strange 512. When a statute directed that the Michaelmas Quarter Sessions should be holden in the week next after the 11th October: *Held*, merely directory, and such sessions may, notwithstanding the enactment, be legally holden at another time. *Rex v. Justices of Leicester*, 7 B. & C. 6, s. c., D. & Ry. 772. "If there had been negative words declaring that the sessions should be holden at no other time but that specified, we might give that effect to the statute; but the words used being only affirmative, I think the authority of Lord Hale (Hale's P. C. 50) is sufficient to warrant us in saying that the statute is merely directory, and that we cannot hold that the proceedings at the session in question, were all *coram non judice*. *Per* Lord Tenterden, C. J., *Ibid.* "The distinction between directory and imperative statutes has been long known; an early instance in which it was taken, is the case of *Rex v. Sparrow*, 2 Stra. 1123, as to the time of choosing overseers. I understand the distinction to be that a clause is directory when the provisions contain mere matter of direction and nothing more, but not when they are followed by such words as that anything done contrary to such provisions shall be null and void to all intents." *Per* Taunton, J., in *Pearce v. Morrice*, 2 A. & E. 96. A strict and severe interpretation of the statute is to be avoided, if possible, when it leads to consequences which the Legislature must be presumed not to have intended. *Per* Moss, C. J. A., in *Lincoln Election*, 2 App. R. A statute specifying a time within which a public officer is to perform an official act affecting the rights and duties of others, is directory merely, unless the nature of the act to be performed, or the phraseology of the statute is such that the designation of time, must be considered as a limitation of the power of the officer. *People v. Allen*, 6 Wend. 486; *People v. Cook*, 8 N. Y. 67; *Jackson v. Young*, 5 Cowen 269. A statute directing an officer, before whom proceedings were had, to make and file his report within twenty days after the appointment of trustees, and also directing the latter to cause their appointment

Assessment
and entry on
roll of
farmer's son.

To be
assessed
unless he
dissents.

9. To remove doubts it is hereby declared that any Farmer's Son entitled as such to be assessed or to have his name entered in the Assessment Roll of any Municipality, shall be so assessed and shall have his name so entered without any request in that behalf, unless he informs or notifies the assessor to the contrary; (f) and any person entitled to be entered in such Assessment Roll or in the Voters' List based thereon, or to vote or to be a voter in the Electoral District in which said Municipality is situate, shall, in order to have the name of such Farmer's Son entered and inserted in such Assessment Roll, or List of Voters, as the case may be, have for all purposes the same right to apply,

to be recorded within thirty days, is directory merely, and an omission to comply with these requirements within the prescribed time will not vitiate the proceedings. *Wood v. Chapin*, 13 N. Y. 509. When there is no substantial reason why the thing to be done might as well be done after the time prescribed as before; no presumption that allowing it to be so done, it may work an injury or wrong; nothing in the Act itself, or in other Acts relating to the same subject matter, indicating that the Legislature did not intend that it should rather be done after the time limited than not to be done at all; then the Courts assume that the intent was that if not done within the time prescribed, it might be done afterwards. But when any of these reasons intervene, the limit is established. *State v. McLean*, 9 Wis. 292. The time fixed for the performance of intermediate steps, after jurisdiction has been once acquired, should be regarded as directory only, and an omission to perform one or more of them in time, would not render the whole proceeding abortive. *United States Trust Company v. United States Fire Insurance Company*, 18 N. Y. 220.

(f) The assessor, under the *Assessment Act*, s. 12, is bound to make diligent inquiry as to all taxable persons in the Municipality; and by s. 20, every farmer's son, *bona fide* resident on the farm of his father or mother, at the time of the making of the Assessment Roll, shall be entitled to be, and may be, entered, rated, and assessed on such roll in respect of such farm; and such farmer's son may require his name to be entered and rated on the Assessment Roll as a joint or separate owner, occupant or tenant of the farm; and such farmer's son, so entered or rated, shall be liable in respect of such assessment as such owner, tenant, or occupant. See also s. 29 of the *Voters' List Act*, and note (e), page 51.

complain or appeal to any Court or to any Judge in that behalf, as such Farmer's Son would or can have personally; unless it is made to appear to the Court or Judge that such Farmer's Son actually dissents therefrom; (g) and the Act passed in the fortieth year of the reign of Her Majesty, chaptered nine, and intituled "An Act to give the right of Voting to Farmers' Sons in certain cases," (h) shall be read and construed as if this section had been included therein at the time of the passing thereof.

Other voters may apply.

Former Act to be read with this Act, 40 V. c. 9.

10. Any voter, and any person entitled to be a voter, and any agent of such voter or person, shall have liberty, at all reasonable times and under reasonable restrictions, to inspect and take copies of, or extracts from assessment rolls, notices, complaints, applications, and other papers and proceedings necessary or of use for the carrying out of the provisions of "The Assessment Act," "The Voters List Act," and this Act; (i) and the Clerk of the Municipality is to afford for the said purposes all reasonable facilities which may be consistent with the safety of the said documents, and the equal rights and interests of all persons concerned, and shall in regard to the matters aforesaid be subject to the direction and summary jurisdiction of the County Judge.

Inspection and copies of documents.

R. S. O. c. 180, and c. 9.

Clerk to afford all reasonable facilities.

(g) This right to apply or complain was conferred upon "a voter or person entitled to be a voter," by s. 8 of the *Voters' List Act*, under the first ground of complaint referred to in note (k), page 20; and upon farmers' sons by s. 8, sub-s. 5, of the same Act, page 25. But as there was no express provision allowing a farmer's son to apply to be entered on the Assessment Roll, the above section was passed to remove doubts as to his rights.

(h) The reference to the prior statute should have been to the *Voters' List Act*. See R. S. O., schedule A, page 2293, and 41 Vic. c. 6, s. 2.

(i) This is substantially the same as s. 239 of the *Municipal Act*. The fees payable under that Act are ten cents per 100 words for copies of documents. The fees payable for Voters' Lists are at the rate of four cents for every ten voters, or six cents for each copy of the printed list of voters. See note (g), page 53.

Uniformity
of decision.

11. In order to facilitate uniformity of decision without the delay or expense of appeals, (j)

(j) Under the English Registration of Voters Act (6 Vic. c. 18), electors have a right of appeal from the revising barrister to the Court of Common Pleas, (s. 60), either by one appeal or a number of appeals consolidated, or by a special case, to be stated by the revising barrister. This section provides an anomalous and rather dilatory procedure for determining the rights of electors under the *Voters' Lists Act*. As to the right to review the decision of the County Judge, see note (y), page 36. The following clauses were proposed in lieu of the provisions in this section :—

(1) The County Judge may, if he thinks fit, with the consent of the parties appearing before him, settle and state a special case for the opinion of the Court of Appeal, or one of the Superior Courts, on any point of law affecting any case or cases before him.

(2) If it appears to the said County Judge that the validity of any number of claims or objections depends upon the same point or points of law, the said County Judge may direct that all such claims or objections shall abide the result of a special case to be settled by him as aforesaid; or in case there shall be a number of claims or objections depending upon different points of law, that all the said claims or objections shall be classified according to the points of law in each class, and be consolidated and stated as a special case in each class; and the said County Judge shall in his statement set forth the several cases, so to abide the result, or classified and consolidated in such special case, or cases, and shall name any person or persons interested and consenting, for and on behalf of himself, or themselves, and of all other persons in like manner interested in such special case or cases, to be appellant or appellants, and respondent or respondents respectively, and to prosecute or answer the said special case or cases.

(3) Such special case or cases shall be signed by the said County Judge, and shall be forthwith transmitted by him (at the expense of the Municipality) to the Registrar or the Clerk of the Court named in such special case or cases; and such special case or cases may at any time be amended by the said Court or a Judge thereof, or referred back to the said County Judge for amendment.

(4) In case any appellant or respondent so named by the County Judge, in a special case or cases, does not prosecute or answer such special case or cases, the Court for which such special case is stated, or a Judge thereof, may allow any other person who might have been appellant or respondent, to intervene and have the conduct of such special case or cases, or of

(1) Any County Judge may take a case on any County

the answer thereto, upon such terms as such Court or Judge may determine.

(5) The said special case or cases shall, within ten days after being so transmitted by the County Judge, be set down by the Registrar or Clerk of the Court (without fee), for argument before a Judge of the said Court of Appeal or before a Judge of the said Superior Court, sitting for the full Court, under the *Administration of Justice Act*, and the said Registrar or Clerk shall forthwith send a notice by post to the parties named as appellants or respondents, of the day appointed for hearing, or the said Judge may direct the same to be heard before the full Court in Term; and the said Court or Judge shall give such judgment or decision as the law requires, and may also award costs to either party as the said Court or Judge may think proper; but in no case shall the costs and counsel fees so awarded, as between party and party, or solicitor and client, exceed the sum of ten dollars and the actual disbursements.

(6) The judgment or decision of the said Court or Judge shall be final and conclusive, and the order thereon shall set out what entries or alterations are to be made on the Assessment Roll, or Voters' List, or both, and shall be served upon the County Judge, the Clerk of the Peace, and the Clerk of the Municipality; and thereupon the said County Judge, the Clerk of the Peace, and the Clerk of the Municipality shall, on receipt of such order, forthwith attach a copy of the order to, and make all proper entries or alterations on the Assessment Roll or Voters' List, or both, as the order of the Court directs, and shall on such roll or list state that such entries or corrections are made pursuant to the order of the said Court; and such order, when so served upon the said County Judge, Clerk of the Peace, and Clerk of the Municipality, shall have the same effect as if the particulars therein, were set out in the said roll or Voters' List at the time when copies of the said Voters' List were retained by the said County Judge, and transmitted by him to the Clerk of the Peace and the Clerk of the Municipality, as required by the said *Voters' List Act*.

(7) The County Judge, notwithstanding the said special cases under this Act, shall forthwith sign, certify and deliver and transmit the statements and corrected copies of such lists, required to be retained and transmitted, pursuant to s. 12 of the said *Voters' List Act*; and he shall on the said statements and copies, so to be retained and transmitted, certify shortly that a special case or cases has or have been settled, as the case may be; and such Voters' Lists, notwithstanding any such special case or cases, shall be held to be the Voters Lists delivered or transmitted to the Clerk of the Peace, as required by law. (Votes and Proceedings, Legis. Assem. 1878, p. 213).

Judge may
state a case
for Court of
Appeal.

Duty of
Lieut.-Gov-
ernor there-
upon.

general question arising or likely to arise, or expected to arise under "*The Voters' List Act*," or this Act, and may transmit the same to the Lieutenant-Governor in Council, (*k*) who thereupon shall immediately (*l*) refer the said case to the Court of Appeal or a Judge thereof for the opinion of such Court or Judge thereupon; (*m*) or

(*k*) The clause is permissive as to the action of the County Judge; but it is imperative on the Lieutenant-Governor in Council to refer, and on the Court of Appeal to hear arguments, and to certify an opinion, should any County Judge state a case, and transmit the same to the Lieutenant-Governor in Council.

(*l*) "Shall immediately," &c. This is the only statute in which the prerogatives of the Lieutenant-Governor are controlled, in express words, by an imperative enactment.

(*m*) By the Privy Council Act of 1833 (3 & 4 Wm. IV. c. 41, s. 4), Her Majesty may refer to the Judicial Committee of the Privy Council, for hearing, or consideration, any matter, as Her Majesty shall think fit; and such Committee shall thereupon hear and consider the same, and shall advise Her Majesty thereon. But it would appear from the reported cases that this jurisdiction has been invoked only in advising the Crown to grant, or refuse, leave to appeal to the Judicial Committee, in cases where appeals do not ordinarily lie, and in cases which are not strictly appealable grievances. By the Supreme Court Act of 1875, (35 Vic. c. 11, s. 52, Can.) the Governor in Council may refer to the Supreme Court, for hearing and consideration, any matter whatever, and the Court shall thereupon hear and consider the same, and certify their opinions to the Governor. But hitherto this function of the Court has never been invoked. By the *Act respecting the Education Department* (R. S. O. c. 203, s. 17) the Minister of Education, whose duties indicate that the Legislature intended to provide a domestic forum for the settlement of school questions, (*Per Burns, J.*, 10 U. C. R. 475), may submit a case arising under the Public or High School Acts, (R. S. O. cc. 204, 205) to any Judge of the Superior Courts for opinion and decision; but although that provision has been in existence since 1860, (23 Vic. c. 49, s. 23) the only case presented to the Courts, under the Act, was in 1877. *Re Petition of the Minister of Education*, 28 C. P. 325. Trustees and executors may apply to a Judge of the Court of Chancery (R. S. O. c. 107, s. 135) for his advice or direction on certain questions affecting the trust property. In the United States, the Supreme Court

(2) The Lieutenant-Governor in Council may refer a case on any such general question to said Court of Appeal or a Judge thereof, for a like opinion. (n) Lieut.-Governor may obtain opinion.

(3) Immediately upon the receipt of such case it shall be the duty of such Court or Judge to appoint a time and place for hearing arguments (if any be offered) upon the points and matter involved in such case, of which time and place, written notice shall be given by the Clerk of said Court posting up a copy of such notice in the office of each one of the Superior Courts at Osgoode Hall, in Toronto, at least ten clear days before the time appointed as aforesaid. Duty of Court or Judge. To appoint time for argument. Ten days' notice.

(4) At the time and place fixed therefor as aforesaid, such Court or Judge shall hear argument upon the case by such and so many of the counsel present (if any) as such Court or Judge may deem reasonable, Court to hear argument.

shortly after its establishment was applied to by the President to advise the Government on certain questions affecting the construction of the Treaty with France, of 1778; but the Court declined on the ground that it could only be called upon to decide controversies brought before it as a legal tribunal, and that the Judges were therefore bound to abstain from giving extra-judicial interpretations, or opinions, on treaties, or questions of law, even though solemnly requested so to do by the Executive. 2 Story on the Constitution of the United States, s. 1571.

(n) The "opinion" of a Judge under this section, upon any "general question arising, or likely to arise, or expected to arise," will not be binding upon any of the Courts, nor upon the Judge himself. It is neither a judgment, nor a sentence, *in rem*, or *inter partes*. A judgment or sentence is a judicial determination of a cause agitated between real parties, upon which a real interest has been settled. In order to make a sentence there must be a real interest, a real argument, a real prosecution, a real defence, a real decision. *Per Wedderburn, S. G., in Duchess of Kingston's Case*, 20 How. State Trials 478; *Philpot v. Hunter*, 2 H. Bl. 402. The validity of a decree of a Court of competent jurisdiction may be questioned on the ground that it was not pronounced in a real suit, or if pronounced in a real substantial suit, that it was between parties who were really not in contest with each other. *Per Lord Eldon, C., in Earl of Bandon v. Becher*, 3 Cl. & Fin. 510.

To certify opinion. and shall thereupon consider the said case and certify to the Lieutenant-Governor in Council, the opinion of the Court or Judge thereon; and such opinion shall thereupon be forthwith published in the *Ontario Gazette*, and a copy thereof sent to the Judge of each County Court.

Publishing same.

Discretionary opinion by Court or Judge to a voter. (5) The said Court of Appeal or a Judge thereof, may also give an opinion on any such question at the instance of any voter or voters, or person or persons, entitled to be voters, if said Court or Judge sees fit; (o) and the proceedings with respect thereto shall be, as nearly as may be, the same as upon a case referred as aforesaid, but, in addition, such Court or Judge may require a deposit of money to cover the costs of hearing the question argued by Counsel, and may require such notice of the proceedings, or any of them, to be given to such person or persons as the Court or Judge may direct.

Deposit of money.

Proceedings.

Clerk to give copies of list to returning officer. 12. The Clerk of the Peace or the Clerk of the Municipality who has the custody of a Voters' List, shall furnish copies thereof to the returning officer in four days after a written application thereof has been delivered to him personally or left for him at his proper office. (p)

Production and custody of ballot papers on a recount. 13. In case of a recount of votes or ballot papers under section one hundred and seventeen and the five next succeeding section of "*The Election Act of Ontario*," the returning officer shall, on a written notice from the Judge, produce the ballot papers at the time and place appointed for the recount, and the same shall continue in the custody of the returning officer; and he shall

R. S. O. c. 10.

(o) There is no provision declaring that such "opinion" of the Court or Judge shall be binding upon the voter or voters so applying. No rules have been promulgated regulating proceedings under this section.

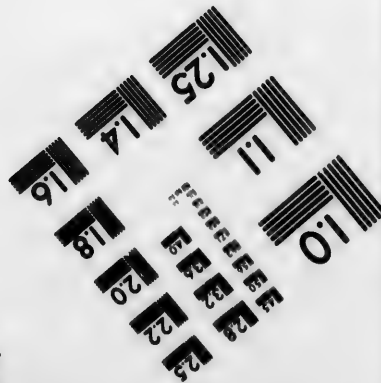
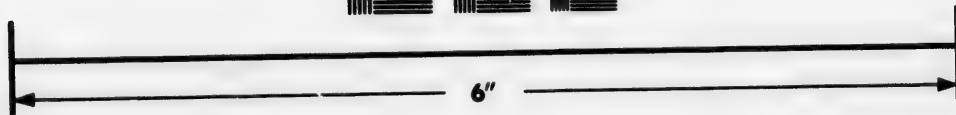
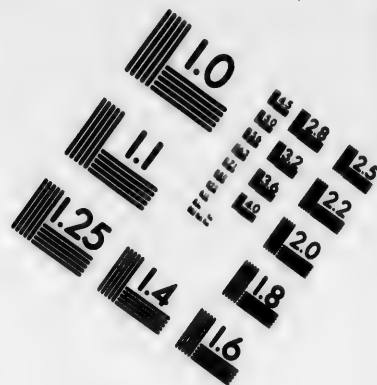
(p) The Returning Officer should indicate which Voters' List he requires for the purposes of an election, i.e., the list filed with the Clerk of the Peace at least thirty days before the date of the writ of election, or the list mentioned in s. 7 of this Act. See pages 73-4.

continue to be responsible therefor, subject to any ^{Returning officer} directions which the Judge may give in respect of the ^{responsible.} said ballot papers. (g)

14. Any person who wilfully and improperly inserts ^{Fraudulent} or procures or causes the insertion of any name in the ^{insertion or} Assessment Roll, or assesses or procures or causes the ^{omission of} assessment of any person at too high an amount, with ^{the assessment} intent in either or any such case to give to any person ^{roll.} not entitled thereto, an apparent right to vote at any election; or who wilfully inserts, or procures or causes the insertion of any fictitious name in the Assessment Roll, or who wilfully and improperly omits, or procures or causes the omission of any name from the Assessment Roll, or assesses or procures or causes the assessment of any person at too low an amount, with intent in either case to deprive any person of his right to vote, shall, upon conviction thereof before a Court of competent jurisdiction, be liable to a fine not exceeding two ^{Conviction:} hundred dollars, and to imprisonment until the fine is ^{fine or} paid, or to imprisonment in the common gaol of the ^{imprisonment, or} county or city, for a period not exceeding six months, ^{both.} or to both such fine or imprisonment, in the discretion of the Court. (r)

(g) This clause is an amendment to the *Election Act*, and may be read in connection with ss. 117-122 of that Act.

(r) This clause,—which may be read in connection with s. 30 of the *Voters' Lists Act*, page 52, which refers to assessors,—provides a penalty against “any person,” wilfully and fraudulently dealing with the assessment roll, or assessor, in creating false votes. The penalty here provided for, as well as the penalties under the *Voters' List Act*, may be sued for and recovered by civil action, or proceeding, at the suit of the Crown only, or of any private party, suing as well for the Crown as for himself, in any form allowed in such case by the law of this Province, before any Court having jurisdiction to the amount of the penalty in cases of simple contracts, upon the evidence of one credible witness other than the plaintiff or party interested. And if no other provision is made for the appropriation of such penalty, one half thereof shall belong to the Crown, and the other half shall belong to the private plaintiff, if there be one, and if there be none, the whole shall belong to the Crown. *Interpretation Act*, c. 1, s. 8, sub-s. 29.



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Fees to clerk
on pro-
ceedings
under the
R. S. O. c. 9,
unless fixed
by contract
or by-law.

15. Where it is provided by any by-law or contract under which the Clerk of any Municipality is appointed or employed, that the sum to be paid him by way of salary as such Clerk is intended expressly or impliedly to include payment for any duties which as such Clerk and under "*The Voters' Lists' Act*" are to be performed by him upon and after the lodging with him of any complaint or appeal under said Act, then such Clerk shall not in respect of such duties be entitled to or be allowed by the County Judge, nor shall there be taxed to him any fee, payment, cost or charge whatever; but when it is not intended by such by-law or contract to provide for compensation for the performance of such last-mentioned duties, (s) then such Clerk shall be entitled in respect thereof to the following but to no other fee or compensation, that is to say: (t)

\$3 per diem.

1. To the sum of three dollars for each day's attendance on the sittings of the Court for the revision of the Voters' Lists; and

Disburse-
ments.

2. To the actual and reasonable disbursements necessarily incurred by him in serving the notices of complaint or appeal when served by himself.

Constables'
fees.

16. The person acting as constable at the sittings of the Court for the revision of any Voters' Lists shall, as

(s) With reference to the Clerk's duties under these Acts, the following suggestion will be found of great practical advantage: "A minute book of every transaction connected with the Voters' Lists, should be kept by every Clerk, just as he keeps the minutes of the Court of Revision. In this he should set down everything, *from day to day*, commencing with the final revision of the roll; this being, as it were, the *era* from which everything following is dated,—when list was sent to the printer,—received back,—posted up,—distributed, &c. This book, when produced at the sittings of the Court, would be *prima facie* evidence of the performance by the Clerk of the several duties entered in it. In it should be set down, also, the decision given by the Judge, on each appeal."—Judge Ardagh on the *Voters' Lists Acts*, 13.

(t) See section 16 of the *Voters' Lists Act* and note (c), page 38.

such constable, be entitled to the following but no other fees or compensation ; that is to say : (u)

1. The sum of one dollar and fifty cents for each day's attendance as such constable ; \$1.50 per diem.

2. For the service of any process or notice including the service, the receipt and the return thereof and all other services connected therewith when allowed by the Judge, a sum not exceeding ten cents per mile one way for each mile actually and necessarily travelled to effect such service. Service of process.

17. The compensation fixed by the two preceding sections shall be paid to the said Clerk and constable respectively, by the Municipality the list for which is the subject of investigation ; and the amount of such compensation as certified by the Judge shall be so paid by the Treasurer of the said Municipality upon the production and deposit with him of the Judge's certificate. (v). Clerk and constable shall be paid by Treasurer of Municipality.

(u) These allowances were formerly settled by the Judge at such sum as he should certify to be reasonable. See note (a) page 38.

(v) The *Municipal Act*, s. 247 provides that every Treasurer shall receive and safely keep all moneys belonging to the Corporation, and shall pay out the same to such persons and in such manner as the laws of the Province and the lawful by-laws or resolutions of the Council of the Municipal Corporation whose officer he is, direct ; but no member of the Council shall receive any money from such Treasurer for any work performed or to be performed ; and such Treasurer shall not be liable in any action at law for any moneys paid by him in accordance with any by-law or resolution passed by the Council of the Municipality of which he is the Treasurer, unless when another disposition is expressly made of such moneys by statute.

An Act respecting Elections of Members of the Legislative Assembly. (a)

REVISED STATUTES OF ONTARIO, CHAPTER 10.

Short title, s. 1.

Interpretation, s. 2.

"Owner."

"Occupant."

"Tenant."

"Farm."

"Farmer's Son."

"Father."

"Election."

"To vote."

"Electoral District."

"Voters' List."

"Corrupt Practices."

Qualification of members, s.

3.

Qualification of voters, ss. 4,

7.

Persons who shall not vote,

ss. 4, 6.

Persons who may vote, s. 7.

In respect of real property.

In respect of income.

Farmers' Sons.

Indians.

Where no Assessment

Roll.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows :—

Short title. 1. This Act may be cited as "*The Election Act*," or "*The Election Act of Ontario*."

INTERPRETATION.

Interpretation clause. 2. Wherever the following words and expressions occur in any part of this Act, they shall be interpreted as follows, unless there is something in the context repugnant to such construction :—

"Owner." (1) "Owner" shall signify proprietor, (b) either in

(a) Only those sections of the *Election Act* which define the qualification of voters at Parliamentary elections, are here given, as the other sections relate almost exclusively to the procedure at elections, and the definition and penalties for corrupt practices.

(b) A similar definition of "owner" is given in the *Municipal Act*, (R. S. O. c. 174, s. 76) and in the *Assessment Act*, (R.

his own right (c) or in the right of his wife, (d) of an

S. O. c. 180, s. 20. The word "freeholder" appearing on the Assessment Roll pursuant to the *Assessment Act* shall, for the purposes of the *Voters' Lists Act*, mean "owner." (R. S. O. c. 9, s. 33. In the *Mechanics' Lien Act*, (R. S. O. c. 120, s. 2) the term "owner shall extend to and include a person having any estate or interest, legal or equitable, in the lands upon or respect of which the work is done, &c., and all persons claiming under him, whose rights have been acquired after the work," &c., is commenced. In the *Railway Act* (R. S. O. c. 165, s. 3) "owner shall be understood to mean any corporation or persons who would, under the Act, &c., be enabled to sell and convey the lands to the company." In the *Assessment Act*, (R. S. O. c. 180, s. 169) the words "original owner shall include and extend to any person who at the time of such sale (for taxes) was legally interested in the said land sold, and all persons claiming through or under him." In the *Public Schools Act*, (R. S. O. c. 204, s. 2) "owner shall include a mortgagee, lessee, or tenant, or other person entitled to a limited interest."

(c) By 7 & 8 Wm. III., c. 25, s. 7, no trustee or mortgagee had a right to vote unless such mortgagee was in actual possession under his mortgage; but the mortgagor, or *cestui que trust*, in possession could vote. Heywood on *Elections*, 63; 1 Stephens's *Law of Elections*, 456.

(d) "Proprietor in right of his wife." With respect to the wife's freeholds for life, and her freeholds of inheritance, before the birth of issue, the husband acquires a freehold interest during the joint lives of himself and wife; the husband and wife are seized in right of the wife. 1 Bright's *Husband and Wife*, 112. The *Married Woman's Property Act*, (R. S. O. c. 125, Eng. Act, 33 & 34 Vic. c. 93,) has however, enabled a married woman to hold her property free of the control of her husband; but it has not altered the political status of the married woman. The husband has, *jure mariti*, the right to vote in respect of her property. "It cannot be supposed that the statute by which the status of a married woman with regard to the power to hold property has been recognized and established, and which was passed *alio intuitu*, has, by a side wind, given them political or municipal rights." Per Cockburn, C. J., in *Regina v. Harrauld*, L. R. 7 Q. B. 363. "The Married Woman's Property Act was intended to protect a married woman in the enjoyment of the rights of property, and was not intended to extend in any way to the political rights of women; and we must not, by a side wind, give an extension to its effect which we can clearly see was not intended." Per Hannen, J., *Ibid*. 364. "The old fashioned notion that women need legislative protection even against their husbands, is fast fading in the

estate for life (e) or any greater estate, either legal or

light of so-called advanced modern legislation. It is not for the Courts to question the wisdom of this legislation. It is rather for the Courts to interpret the laws, leaving to the Legislature the right to move forwards or backwards as the exigencies of society appear to them to demand." *Per Harrison, C. J., in Kerr v. Stripp*, 40 Q. B. 134.

(e) "An estate for life." The most ancient of estates is an estate for life. A grant of land to A. B., without any words of limitation, is the grant of an estate for life. A tenant either for his own life or for the life of another (*pur autre vie*), hath an estate of freehold and he that hath a less estate cannot have a freehold. C. Litt. s. 57. All estates which may by possibility last for life although they may be determined before the life expires, are freeholds. Co. Litt. 42. As an estate granted to a widow during widowhood though determinable on her marrying again. The following are estates for life: A grant to a man and woman during coverture. So long as the grantee dwells in such a house. So long as he pays a certain sum. A tenancy by the curtesy. *Ibid.* 354. One in possession of a house by virtue of an office for life. 3 Burr. 1287. The husband of a coparcener may vote. *Bedfordshire Election, (Southwell's Case)* 2 Luters 447. Prior to 1780 the practice was to exclude the votes of those who had married widows entitled to dower, but whose dower had not been assigned by metes and bounds. *Gloucestershire Election*, Heywood, 56. The 20 Geo. III., c. 17, (1780) provided that when any woman, widow of a tenant in fee, and entitled to dower, married a second husband, such second husband should be entitled to vote in respect of such dower, although such dower had not been assigned by metes and bounds, provided he was in receipt of the profits of such dower, and that the estate from whence the same issued was rated and contributed to the land tax. Whether this statute, being one relating to "civil rights," is in force in Ontario under the Constitutional Act, 32 Geo. III. c. 1, (R. S. O. c. 92), has not been judicially determined. One C. married a widow who was entitled to an estate tail in lands, but before marriage he covenanted with a trustee in a deed that he would not intermeddle with the rents and profits of the estate, but that they should remain to the separate use of the wife, and that the trustee should receive the rents for her use, and have the sole management of the estate, subject to her control, and that she might devise or dispose of it as she thought fit, and that he would join in all necessary acts to render effectual her disposition of it. The tenant paid the rent to the wife. It was argued that the beneficial freehold, not the mere legal estate, gave the vote. The committee held the vote bad. *Bedfordshire Election, (Conquest's Case)* 2 Luters 422. And see *Bennet v. Davis*, 2

equitable, (f) except in the provisions of this Act relating to the qualification of farmers' sons to vote,

P. Wms. 316; *Darley v. Darley*, 3 Atk. 399. Lands were conveyed to the father and mother of A. for life, with power of appointment. They jointly appointed to A. in fee. This was held to operate as a good appointment of the father for his own life, and so A. had a freehold and might vote. *Gloucestershire Election*, Heywood 61. The reversioner of a freehold, if the estate is let for life, cannot vote at elections; but he may vote if the letting is for a term. *Chambers's Dictionary of Elections*, 539; *Heywood on Elections*, 60. A father, by his will, bequeathed his estate to trustees to pay out of the profits so much per week to his son J., and the reversion to his son T., on the death of J.: *Held*, that J. had a right to vote, but T. had not. *Gloucestershire Election*, Heywood 64.

(f) An equitable estate, but not an equitable right or interest, in lands, confers the right to vote. *Elliott on Parliamentary Electors*, 53. Courts of Equity consider that which is agreed to be done as actually performed. So where a person has agreed to sell and another has agreed to purchase, certain premises, the vendee being put into possession of the estate by virtue of the agreement; or becoming otherwise entitled to a specific performance of the contract; or when the vendor becomes a trustee for the vendee to convey to him the estate, the vendee has such an equitable estate as gives him a right to vote. *Seton v. Slade*, 7 Ves. 274; *Gallaway v. Ward*, 1 Ves. 318; *Rawlings v. Burgess*, 2 V. & B. 387. But conditions may be introduced by which the vendee will not acquire an equitable estate. *Levy v. Lindo*, 3 Mer. 84; *King v. King*, 2 My. & K. 442; *Wall v. Bright*, 1 J. & W. 494; *Acland v. Gaisford*, 2 Mad. 28. The question in the cases affecting the right of vendor, or vendee, to vote, seems to be,—who is to have the rents and profits of the estate, by virtue of the agreement, until the legal conveyance is made; or who must bear any loss which may happen, or be entitled to any benefit which may accrue, to the estate, between the agreement and the conveyance? *Rogers's Law of Elections*, 33; *Heywood on Elections*, 111. If the vendee is in a position to compel a conveyance, in a Court of Equity; if he has paid the purchase money, or a part of it, under an arrangement with regard to the remainder, and has been let into possession, which generally speaking, amounts to an acceptance of the title, little doubt can exist of his right to vote. *Rogers's Law of Elections*, 34. If there be any doubt as to what a Court of Equity would do, the vendee should be treated as having an inchoate right merely, but not an equitable estate. *Rex v. Geddington*, 2 B. & C. 129. Or that he has no estate, but an equitable right

where the proprietor is a widow, and in such case the

merely. *Rez v. Llantillio Grosseny*, 5 B. & C. 462. A. made a contract for purchase of certain lands, but the conveyance had, at his own request, been delayed. The land was unlet, and he had not by himself or agent taken possession of the land, nor exercised any acts of ownership thereon, it being conceded that the vendor was in actual possession: *Held*, that A. was not entitled to vote. *Anelay v. Lewis*, 17 C. B. 316, s. c., 25 L. J. C. P. 121. There must be an actual possession, or receipt of the rents and profits. And it could not have been the intention of the Legislature to give to a person, who has a mere equity, a right of voting which the same person would not have had unless he had acquired a complete title both at law and equity. *Per Jervis, C. J., Ibid.* A bare permission to receive the rents and profits of an estate unconnected with the legal interest in it, gives no right to vote; as where a voter has sold his estate to a person who at the sale executed a bond to permit him to receive the rents and profits for life: *Held*, that he had no right to vote. *Gloucestershire Election*; 1 Stephens's *Law of Elections*, 456. So where a father alleged that the son virtually owned a certain unoccupied lot, of which he had no deed; the father collected the rent, in wood, from a tenant who leased it for the pasture, and paid over the proceeds to the son: *Held*, that the son had no vote. *Per Richards, C. J., in Stormont Election, (Braydon's Case)*. The receipt of rents and profits of an estate by one who is a stranger to the estate will give him no right to vote, nor will it deprive the real owner of his vote. *Gloucester Election*, 1 Stephens's *Law of Elections*, 457; *Bedfordshire Election, (Trotman's Case)* 2 Luders 431. Where a person not having any title from the Crown, or by a tax sale, leased to another, certain land, the fee of which was in the Crown: *Held*, not entitled to vote. *Per Patterson, J. A. Lincoln Election, (Clark's Case)*. When the estate was devised to trustees to sell, for the payment of debts, and the surplus to be divided between A. (the voter) B. and C., and the estate had not been sold; it was argued that the remainder men took an equitable interest: *Held*, vote good. *Middlesex Election, (Rice's Case)* 2 Peck. 106. When an estate has been devised to T. in trust to pay legacies to the younger children, and T. refused to take the land subject to the trust, but the younger children, with his consent, took possession of the land in satisfaction of their legacies: *Held*, they were purchasers for a valuable consideration, and that they were entitled to vote. *Ibid. (Smith's Case)* 2 Peck. 424. Where the devisees of an estate, charged with an annuity, put the annuitant in possession in satisfaction of the annuity: *Held*, that the annuitant had a right to vote. *Bedfordshire Election, (Bonfield's Case)* 2 Luders 440. Where a grantor conveyed an estate to trustees

word "owner" shall signify proprietor in her own right of any such estate ; (g) Where owner is a widow.

(2) "Occupant" (h) shall signify a person *bona fide* "Occupant."

for the payment of debts out of the rents and profits, and to be re-conveyed when the debts were all paid, but at the election such debts had not been paid : *Held*, that the grantor was not entitled to vote. *Yorkshire Election, Heywood on Elections*, 108. Where the voter was the equitable owner, the deed being taken in the father's name, but the son furnishing the money, the father in occupation with the assent of his son, and the proceeds not divided : *Held*, that being the equitable owner, notwithstanding the deed to the father, he had the right to be on the roll. *Stormont Election, (Blair's Case)* 7 C. L. J. N. S. 219. So where a verbal agreement was made between the voter and his father before the preparation of the Assessment Roll, and on this agreement the voter from that time had exercised control, and had taken the proceeds to his own use, although the deed was not executed until after the revision of the roll : *Held*, entitled to vote. *Ibid. (Gollinger's Case)* 22. Where the voter had only received a deed of the property on, which he voted after the revision of the Assessment Roll, but previous to that date had been assessed for, and paid taxes on the place, but not owning it : *Held*, that not possessing the qualification at the time he was assessed, or at the final revision of the roll, he was not entitled to vote. *Stormont Election, (Cahey's Case)* 7 C. L. J. N. S. 219. Where the father had made a will in his son's favour, and told the son if he would work the place and support the family he would give it to him; and the entire management remained in the son's hands from that time, the property being assessed in both names, the profits to be applied to pay the debts due on the place : *Held*, that as the understanding was that the son worked the place for the support of the family, and beyond that for the benefit of the estate, which he expected to possess under his father's will, he did not hold immediately to his own use and benefit, and was not entitled to vote. *Ibid. (Weort's Case)* 218 ; See also *Wallis v. Birks*, L. R. 5 C. P. 222.

(h) By sec. 33 of the *Voters' List Act* (p. 54), "householder" shall also mean "occupant." The term "occupant" will apply to persons occupying Crown Lands, under licenses of occupation from the Commissioner of Crown Lands (R. S. O., ch. 23, sec. 15), and persons claiming under them by assignment (*Ibid*, sec. 17), or by tax sale (*Ibid*, sec. 18) ; or without such licenses, as squatters. A squatter who is in possession of land for his own benefit, has a title sufficient to support his vote. *Brough's Law of Elections*, 12. And also to persons jointly occupying

occupying property, otherwise than as owner or tenant either in his own right, or in the right of his wife, but

the land with the owner, and having an agreement for a share in the crops. But such person must be in a position to compel the owner to carry out such agreement. *Stormont Election Case*, 7 C. L. J. N. S. 213. And must have such interest in the land at the date of the last final revision of the assessment roll. *Ibid*: *Re McCulloch and the Judge of Leeds and Grenville*, 35 Q. B., 452; or if such interest is parted with after such final revision, the voter must be a resident of the constituency at the time of the election. *South Grenville Election*. *Per Mowat*, V.C. The occupancy must be to the use and benefit of the party claiming the right to vote. *Brockville Election*, 7 C. L. J. N. S., 221. A "windmill" stood in a common upon a plat of grass ground, large enough to clear the wings, enclosed by a fence put up by the voter. It was fixed on a post upon pattens in a foundation of brick-work. Nothing was shewn as to whether the plat of ground did, or did not, belong to the voter: *Held*, vote good. *Bedfordshire Election (Marshall's Case)*, 2 Luters, 441; Where it is proved that an agreement exists (verbal or otherwise), that the son should have one-third or one-half the crops as his own, and such agreement is *bona fide* acted on, the son is entitled to be on the roll. *Brockville Election*, 7 C. L. J. N. S., 221. So where the owner has for some years given up the whole management of the farm to his son, retaining his right to be supported from the product of the place, the son dealing with the crops as his own, and disposing of them to his own use. *Ibid*. A clearly established course of dealing for years as to the management and disposition of crops; and acts done by the son in the management of the farm: *Held* sufficient to establish an interest in the crops in the son, though the evidence of any original agreement or bargain be not clear. *Ibid*. If the evidence would warrant the jury in finding the crops to be the property of the voter, the son is rightly placed on the roll. *Ibid*. In a milling business, where the agreement between the father and the son was, that if the son would take charge of the mill and manage the business, he should have a share of the profits, and the son in fact solely managed the business, keeping possession of the mill, and applying a portion of the proceeds to his own use: *Held* that the son had such an interest in the business, and, while the business lasted, such an interest in the land, as entitled him to be on the roll. *Stormont Election (Bullock's Case)*, 7 C. L. J. N. S., 213. So, where the voter had been originally put upon the Assessment Roll merely to give him a vote; but by a subsequent arrangement with his father, made five or six years before the election, he was to support his father, and apply the rest of the proceeds to his own support, it was held

being in possession of such property and enjoying the revenues and profits arising therefrom to his own use ^{Possession to his own use.}

(i);

(3) "Tenant" (j) shall include any person who, in—"Tenant."

that if he had been put on originally for the purpose of giving a vote, and that was the vote now questioned, it would have been bad, but being continued for several years after he really became the occupant for his own benefit, he was entitled to be on the roll, *Ibid* (*Gore's Case*). But the rule is different, where father and son live together on the father's farm, and the father is in fact the principal, to whom the money is paid and who distributes it; and the son has no agreement binding on the father to compel him to give the son a share of the proceeds of the farm, or to cultivate a share of the land, and the son merely receives what the father's sense of justice dictates. *Ibid*, (*Eamon's Case*). Or where a certain occupancy was proved on the part of the son, distinct from that of the father, but no agreement to entitle the son to a share of the profits, and the son merely worked with the rest of the family for their common benefit. *Ibid* (*Raney's Case*). Where the owner died intestate, and the estate descended to several children, only the interest of the actual occupants is generally to be considered. *Brockville Election*, 7 C. L. J. N. S., 221. Unless the occupant be shown to be receiving the rents and profits, and on account of a party interested, though not in actual possession, a mere liability to account is not to be considered. *Ibid*. The widow of an intestate owner continuing to live on the property with her children, who own the estate, and work and manage it, should not, till her dower be assigned, be assessed, nor should any interest of hers be deducted from the whole assessed value, she not having the management of the estate. *Ibid*.

(i) The terms "bona fide occupying property," "being in possession of such property," would infer an actual possession in fact, as distinguished from a possession in law. "Actual possession" being therefore a well known legal phrase or expression, the Legislature cannot be taken to have used it in any other than in such well known sense, that is, as contradicting distinguished from possession in law. *Per Tindal, C. J., Murray v. Thorniley*, 2 C. B. 217. See also *Heyden v. Overseers of Tiverton*, 4 C. B. 1; *Carroll v. Barry*, 15 Ir. C. L. R. 373.

(j) In the language of the law, every possessor of landed property is a tenant, with reference to such property; and this whether the property is absolutely his own as "tenant in fee;" or is held as an entailed estate, as "tenant in tail"; or held for his own or another's life, as "tenant for life"; or held under

Paying rent or produce. Instead of paying rent in money, is bound to render to the owner any portion of the produce of such property ;

a lease of a certain term, as "tenant for years." In this Act it is used in the popular sense of one holding the land of another, who is termed his landlord ; and for the use of which land the tenant pays rent in money or produce. The relation of landlord and tenant may be created by assignment or lease. Where the alienor conveys the whole estate to an alienee, leaving no reversion to himself, the conveyance amounts to an assignment. When he grants only a portion of an estate, reserving to himself a reversion, the conveyance is a lease. Where a lessee for years demises part of his property to another for the whole of his term, the demise is called an assignment *pro tanto*. When he disposes of his term, reserving a reversion of even one day, the transfer is, with reference to the original lease, an underlease. *Crusoe doe dem. Blencowe v. Bugby*, 3 Wils. 234, s. c., 2 W. Bl. 766. A, the former tenant of a house, died intestate, leaving a widow and infant children in possession. No administration was taken out to his estate. B married the widow, and went into possession of the house ; paid all rent and taxes, and maintained the children of the intestate : *Held*, that B was entitled to vote. *McLoughlin's Case*, Alcock's Reg. Cas. 249. Where a party entered into possession of a lot which had no house or building, and sowed a crop there, upon a verbal understanding that he was to have the product, but no special time was mentioned : *Held*, that a sufficient tenancy was created. *Mulhern v. Fortune*, 8 C. P. 434. P., owning land, agreed with M. & B. that he would furnish a team of horses, the farming implements and seed for a certain lot ; they agreed to do the work in a proper manner and in the proper season, as P. should direct, harvest the grain, pay for their share of threshing, and keep up fences, etc. M. & B. for the first year had one-third, and in the second year one-half of the crops : *Held* not a letting of the land on shares, giving to M. & B. a term of possession, but a contract for remuneration for their care and labour in growing the crops as P. should direct. *Park v. Humphrey*, 14 C. P. 209. A. owned a farm, and agreed with B. to work it on shares, each supplying the seed and labour and to have one-half of the profits, B. to pay \$60 for implements and \$160 a year, but he was not placed in possession of any distinct portion of the farm, owing to the shape of the farm, the parties being equally in possession of the whole : *Held* that B. was an occupant with A., and not his tenant. *Oberlin v. McGregor*, 26 C. P. 460. Where the voter and his son leased certain property, and the lease was drawn in the son's name alone, and when the crops were reaped the son claimed they belonged to him solely, the voter owning other property, but being assessed

(4) "Farm" shall mean land actually occupied by "Farm,"
the owner thereof, and not less in quantity than twenty ^{not less than} 20 acres.
acres;

for this only: *Held*, vote bad. *Stormont Election (Hills Case)*, 7 C. L. J. N. S. 213. Where the voter was the tenant of certain property belonging to his father-in-law, and before the expiration of his tenancy, the father-in-law, with the consent of the voter (the latter being a witness to the lease), leased the property to another, the voter's lease not expiring until November, and the new lease being made the March previous: *Held*, that after the surrender of the lease, to which he was a subscribing witness, he ceased to be a tenant, and that to entitle him to vote, he must have the qualification at the time of the final revision of the Assessment Roll, though not necessarily at the time he voted, so long as he was still a resident of the electoral division. *Ibid.* (*Rupert's Case*). The occupant of any separate portion of a house, such portion having a distinct communication with a public road or street by an outer door, is a householder (R. S. O. c. 174, s. 84). Where a house is let out in separate portions to different tenants, and the owner or landlord does or does not reside on the premises, though there is but one outer door common to all tenants, each distinct portion so let, is the house of such occupier, and each tenant is entitled to be rated, and to be registered as a voter. *Regina ex rel. Forward v. Bartels (Long's Case)*, 7 C. P. 539; *Cirencester Election*, 2 Fraser 451; *Great Marlow Election (Crosby's Case)*, B. & Aust. 100; *Score v. Huggett*, 7 M. & Gr. 95; *Rex v. Unsworth*, 5 A. & E. 201; *Toms v. Luckett*, 5 C. B. 23. Where rooms in a factory, in which each tenant had his own spinning machine, worked by a steam engine belonging to and worked by the landlord, but each tenant had the exclusive use of his own room and kept the key of the door which he approached by a common staircase: *Held* that each tenant was entitled to vote. *Wright v. Town Clerk of Stockport*, 5 M. & Gr. 33. Where a person occupied exclusively the whole of the second floor in a house, and the landlord lived in the house and occupied the shop and first floor. The outer or street door was kept closed, but both inmate and landlord had keys thereto: *Held*, that such inmate was not entitled to vote. *Wansey v. Perkins*, 7 M. & Gr. 155. The occupiers of chambers in a college or in the Inns of Court are entitled to vote. *Evans and Fynche's Case*, Cro. Car. 473. *Middlesex Election, (Anstey's Case)*, 2 Peck. 109. *Stamper v. Overseers of Sutherland*, L. R. 3 C. P., 403. *Barnes v. Peters*, L. R. 4 C. P. 539. *Boon v. Howard*, L. R. 9 C. P. 277. But when the rooms occupied were not structurally severed, as when the separate rooms of a set of chambers were

"Son,"
"Farmer's
Son," of
owner and
actual occu-
pant.

(5) "Son" or "Son" or "Farmers' Son," shall mean any male person or persons not otherwise qualified to vote, and being the son or sons of an owner and actual occupant of a farm ;

rented to separate tenants, each of whose rooms communicated with a vestibule which had an outer door leading to the landing on a public staircase: *Held* that the occupants of the separate rooms had no right to vote. *Cuthbertson v. Butterworth*, L. R. 4 C. P. 523. *Cuthbertson v. Hains*, *Ibid.* 525. See also *Thompson v. Ward*, L. R. 6 C. P. 327. But the tenant of the set of chambers does not lose his vote by subletting some of the rooms. *Smith v. Lancaster*, L. R. 5 C. P. 246. When residence in an official or other house is necessary or conducive to the official performance of the duty or service required, and is either expressly or impliedly made a part of such duty or service, there the relations of landlord and tenant are not created, and such official, or servant, has no right to vote. *Dohson v. Jones*, 5 M. & Gr. 112. *Clark v. Overseers of Bury St. Edmund*, 1 C. B. N. S. 23, s. c. 26 L. J. C. P. 12. A sergeant of militia occupied a house close to where the arms etc., were stored. The house was assigned to him by the colonel to look after the stores, and if he left it without permission, he would be guilty of a breach of discipline, and might be dismissed. A certain sum per week was deducted from his pay as occupier of the house: *Held*, not entitled to vote. *Fox v. Dalby*, L. R. 10 C. P., 285. But when without any obligation to reside in a particular dwelling, an officer or servant chooses to occupy a house which is provided for him, the circumstance that he receives less salary or wages in consideration of the benefits he derives from occupying a house, convenient for the discharge of his duty, or service, or that he would have an allowance for rent or lodging money, if he did not occupy it, will not prevent him from occupying as tenant, and having a right to vote. *Hughes v. Overseers of Chatham*, 5 M. & Gr. 54. "There is no inconsistency in the relation of master and servant and that of landlord and tenant. A master may pay his servant by conferring on him an interest in real estate, either in fee, for years, at will, or for any any other estate or interest, and if he do so the servant then becomes entitled to the legal incidents of the estate as much as if it were purchased for any other consideration. But it may be that a servant may occupy a tenement of his master's, not by way of payment of his services, but for the purpose of performing them, *required* to occupy in the performance of his contract to serve his master. *Per Tindal, C. J.* *Ibid.* When a voter, after becoming insolvent, continued in the undisturbed occupation of the premises

(6) "Father" shall include step-father ;

"Father."

(7) "Election" shall mean an election of a member "Election." to serve in the Legislative Assembly ;

(8) "To vote" shall mean to vote at the election of "To vote." a member of the Legislative Assembly ;

(9) "Electoral District" shall mean any County, or "Electoral other place or portion of this Province, entitled to re-District." turn a member to the Legislative Assembly ;

(10) "Voters' List" shall mean the copy of the "Voters' voters' list furnished in accordance with section fifty- List." six of this Act ;

(11) "Corrupt practices," or "Corrupt practice," "Corrupt shall mean bribery, treating and undue influence, or practices," any of such offences, as defined by this or any Act of (1) Bribery. (2) Treating. (3) Undue the Legislature, or recognized by the Common Law of influence. (4) Entertainment to voters. (5) Hiring vehicles. (6) Personation. (7) Selling liquor. the Parliament of England ; also any violation of the one hundred and fifty-first, one hundred and fifty-fourth, or one hundred and fifty-sixth, sections of this Act, and any violation of the one hundred and fifty-seventh section of this Act, during the hours appointed for polling. (l) 32 V. c. 21, ss. 6 & 81 ; 36 V. c. 2, s. 1 ; 37 V. c. 5, s. 39 (8) ; 40 V. c. 9, s. 1.

QUALIFICATION OF MEMBERS.

3 No qualification in real estate shall be required No property of any candidate for a seat in the Legislative As- qualification sembly. (m) 33 V. c. 4, s. 2. for members.

of which he was tenant : *Held* that he was entitled to vote. *Dublin Election (Hyland's Case)*, Fal. & Fitz., 158. *Taunton Election, (Cockram's Case)*, *Ibid*, 315. *Murray's Case*, *Alcock's* *Regr. Cas.* 251.

(l) See note (c), page 56.

(m) The property qualification required of members of Parliament was abolished in England in 1858, (21 and 22 Vic. 26) in Ontario in 1869, (33 Vic. c. 4, s. 2), and in Canada in 1874, (37 Vic. c. 9, s. 20).

QUALIFICATION OF VOTERS.

Who shall not vote.

Persons disqualified from voting.
 (1) Judges.
 (2) Customs officers.
 (3) Clerks of Peace.
 (4) County Attorneys.
 (5) Registrars.
 (6) Sheriffs and deputies.
 (7) Deputy Clerks of the Crown.
 (8) Crown Land agents.
 (9) Postmasters in Cities and Towns.
 (10) Excise officers.
 Penalty ; \$2,000, vote null.

4. The Chief Justice and the Justices of the Court of Appeal, the Chancellor and Vice-Chancellors of Ontario, the Chief Justices and Judges of the Courts of Queen's Bench and Common Pleas in Ontario, all County Judges, all Officers of the Customs of the Dominion of Canada, all Clerks of the Peace, County Attorneys, Registrars, Sheriffs, Deputy Sheriffs, Deputy Clerks of the Crown, and Agents for the sale of Crown Lands, all Postmasters in Cities and Towns, and all Officers employed in the collection of any duties payable to Her Majesty in the nature of duties of excise, shall be disqualified and incompetent to vote at any election ; and if any public officer or person mentioned in this section, votes at any such election, he shall thereby forfeit the sum of two thousand dollars, and his vote at such election shall be null and void. (n) 32 V. c. 21, s. 2 ; 39 V. c. 10, s. 48.

Certain officers and persons not to vote.
 (1) Returning officers.
 (2) Election Clerk.
 (3) Persons employed about election, and to be paid for services.

5 No Returning Officer or Election Clerk, and no person who, at any time, either during the election or in reference thereto, or for the purpose of forwarding the same, by any candidate or by any person whomsoever, as counsel, agent, attorney, or clerk, at all polling place at any such election, or in any other capacity whatever, and who has received or expects to receive either before, during or after the said election, from any candidate, or from any person whatsoever, for acting in any such capacity as aforesaid, any sum of money, fee, office, place of employment, or any promise, pledge or security, whatever therefor, shall be entitled to vote at any election. (o) 32 V. c. 21, s. 3 ; 38 V. c. 3, s. 27.

(n) See notes (m), page 7, and (i) page 63.

(o) This is substantially the same as s. 1 of the English Act, 7 & 8 Geo. IV. c. 37, which disqualified persons employed "as counsel, agent, attorney, poll-clerk, flagman, or in any other capacity." The general words of that section

2. The preceding provision shall not apply to Deputy-Returning Officers and Poll Clerks, appointed under this Act and receiving, as such, the fees to which such officers are entitled under this Act. (p) 38 V. c. 3, s. 27.

Deputy-Returning Officers and Poll Clerks may vote.

gave rise to a great variety of decisions; and in 1867 the following clause was substituted:—No elector who shall have been retained, hired, or employed, for all or any of the purposes of the election, for reward, by or on behalf of any candidate at such election, as agent, canvasser, clerk, messenger, or in *other like employment*, shall be entitled to vote at such election. (30 & 31 Vic. c. 102, s. 11). Under the first Act the following were disqualified:—A solicitor who was a paid agent. *New Windsor*, (*Barton's Case*) K. & Omb. 180. A town clerk who read the proclamation, and sat in the polling booth with the mayor, during the election, and received payment therefor. *Ibid.* (*Secker's Case*) 185. An elector employed as a special messenger during the election, although it appeared that such was his ordinary calling. *Evesham Election*, (*George's Case*) Fal. & Fitz. 527. A check clerk employed and paid by one candidate, vote struck off the poll, including that of the other candidate by whom he had not been employed. *Bedford Election*, (*Wilcox's Case*) P. & K. 136, s. c., C. & R. 94. See further, *Worcester Election*, K. & Omb. 246. The votes of the following were allowed:—An elector who was employed to erect the hustings, and whose bill was afterwards paid. *Ipswich Election*, (*Page's Case*) K. & Omb. 387. An elector who led the band and was paid. *Monmouth Election*, (*Partidge's Case*) *Ibid.* 421. An elector who was a regular constable of the borough, and for whose services a sum of money was included in the town clerk's account to be paid to him. *New Windsor Election*, (*Lovegrove's Case*) K. & Omb. 183. So the town sergeants of the corporation, paid out of the rates for their services at the election. *Ipswich Election*, (*Cook's Case*) K. & Omb. 384. But two of them who acted as door-keepers of a candidate's committee room were disallowed. *Ibid.* The following are cases under the later Act: Printers who also acted as messengers: *Held*, not disqualified. *Northallerton Election*, 1 O. & H. 170. The employment of sons of voters as messengers, when their wages were paid to their fathers, were held to invalidate the votes of their fathers. *Southampton Election*, 1 O. & H. 223. So payments to a voter to remunerate him for expenses incurred in employing assistants for his own business, while he was engaged in election matters. *Ibid.* 224. But employing a voter who was a cabman, which was his ordinary occupation, does not disqualify. *Ibid.* Employment of voters to keep order at the doors of the polling stations; invalidates their votes. *Gloucester Election*, 2 O. & H. 62.

(p) These officers may vote at the polling sub-division

No woman
to vote.

6. No woman shall be entitled to vote at any election. (g) 32 V. c. 21, s. 4.

Who may Vote.

Who may
vote at elec-
tions.

7. The following persons, and no others, being of the full age of twenty-one years, (r) and subjects of Her Majesty by birth or naturalization, (s) and not being disqualified under the preceding sections, or otherwise by

where they are officially employed, on the production of certificates of their qualification from the returning officer. Ss. 87, 88.

(g) See notes (o), page 66, and (d) page 87.

(r) See note (i), page 5.

(s) By a resolution of the House of Commons adopted on the 22nd December, 1691, it was resolved that no alien not being denizen, or naturalized, hath any right to vote in elections of members of Parliament. *Westminster Election*, 12 Com. Jour. 367. An alien is one born out of the dominions or allegiance of the crown. *Calvin's case*, 7 Rep. 1. But this must be understood with some restrictions, for by 7th Anne, c. 5, 4 Geo. II., c. 4, and 13 Geo. III., c. 21, all children born out of the King's legiance, whose fathers, or grandfathers by the father's side, were natural born subjects, are now deemed natural born subjects themselves. Heywood *on Elections*, 156, 1 Stephens' *Law of Elections*, 367; Elliott *on Parliamentary Electors*, 264. The Common law excludes an alien from voting at elections not merely because he cannot hold the requisite qualification in law, but because he labours under a personal incapacity; he cannot be elected or appointed to any public office whatever, nor can he vote. An alien-born who has obtained *ex donatione regis*, letters patent to make him a British subject, is termed a denizen, whereby he becomes a subject in regard to his person, but he cannot inherit. He may vote, when qualified in other respects, at the election of members to serve in Parliament. 12 Com. Jour. 367. S. was objected to as an alien. The evidence in support of the objection was that of a witness who proved that he had obtained letters of denization for the voter: *Held*, vote good. *Middlesex Election (Solomon's case)*, 2 Peck. 117. In practice, great difficulty is found in procuring evidence to prove an individual an alien. Elliott *on Parliamentary Electors*, 265. "We must presume the resident and assessed inhabitants in this country to be British subjects till something is shewn to the contrary, from which the Court can determine they are aliens. It is not sufficient to swear that certain voters are aliens without giving particular evidence to show that they were aliens, and how they were aliens, as by having been born in a certain place named out of the allegiance

law prevented from voting, shall, if duly entered on Subjects of Her Majesty.

of the British Crown." *Per* Robinson, C. J., *Reg. ex rel. Carroll v. Beckwith*, 1 Pr. R. 284. The Chief Clerk of the Alien Office produced the declaration of alienage under the Alien Act, 33 Geo. III. c. 4, made by the voter, and a memorandum of the license granted him under the statute: *Held*, vote bad. *Middlesex Election (Barbre's case)*, 2 Peck. 118. The brother of the voter proved that he was a native of Bordeaux, and ten years older than the voter; that the voter was born there; that his father's family were there; that the voter came to England 12 years before and had not, to the knowledge of the witness, been naturalized or received letters of denization: *Held*, Evidence not sufficient to establish alienage against the voter. *Reading Election (Barthe's case)*, Fal. & Fitz. 553. The evidence produced to prove alienage was that of a brother of the voter, and of another witness who had known him in Germany and afterwards in England. It was contended that there was no proof that the parents were not British subjects: *Held*, vote good. *Bedford Election (Levi's case)*, P. & K. 147. The voter testified that he was born in France, but that he had voted at the election in question. No other evidence was adduced: *Held*, that as voting without naturalization, was a criminal neglect or fraud, and constituted a misdemeanor, the legal presumption was that having voted he was naturalized. *People v. Pease (Rivino's case)*, 30 Barb. 588, in appeal, 27 N. Y. 45. The presumption of innocence, where one who is alien born has voted at an election, will prevail over the counter presumption that he is still an alien. *Brightly on Elections*, 413. *Spragins v. Houghton*, 3 Ill., 377. "If every naturalized citizen must always be prepared with his proofs to maintain the grounds upon which he obtained his papers in all Courts, and places in which they may be brought in question, the boon of citizenship, which is so liberally bestowed, would be hardly worth possessing." *The Acorn*, 2 Abbott U. S. Rep., 431. See also *Southampton Election*, 22 Com. Jour., 445; *Yorkshire Election*, *Ibid*, 696; *Oxfordshire Election*, 27 Com. Jour. 177. Children of aliens born within the dominions of the King, are natural-born subjects; *Calvin's case*, 7 Rep. 18. Children born in a country of which their parents are not citizens, and while their parents are temporarily sojourning there, or *in itinere*, are natural born citizens of that country, and may thereby become entitled to a double nationality. *Lynch v. Clarke*. 1 Sand. Ch. 583. Whether the foreign parents were in England, *in itinere*, or for occasional business their children born during their stay, were natural born subjects. *Per* Sandford, V. C., *Ibid*. A child born here (United States), of an English father is a citizen here and may inherit

the list of voters proper to be used at the election then

here as well as in England ; which would be a case of that double allegiance which is effected by the rule of common law, and is not a novelty, nor peculiar to that law. *Ibid.* A child of Canadian parents, born in the United States, during his mother's temporary sojourn there, is a citizen of the United States. *Munro v. Merchant*, 26 Barb. 383. The English statutes respecting aliens and naturalization may be classed as follows : (1) *Children of natural born subjects born out of the allegiance of the Crown.* (a) 25 Edw. III. st. 2. "That all children inheritors which from henceforth shall be born without the legiance of the King, whose fathers and mothers at the time of their birth be and shall be at the faith and legiance of the King of England, shall have and enjoy the same benefits and advantages to have and bear the inheritance within the same legiance as the other inheritors aforesaid in time to come, so always that the mothers of such children do pass the sea by the license and wills of their husbands." (See also 42 Edw. III. c. 10). (b) 7 Anne, c. 5 :—"That the children of all natural born subjects, born out of the legiance of Her Majesty, her heirs and successors, shall be deemed, adjudged and taken to be natural born subjects of this Kingdom to all intents considerations and purposes whatsoever." (See also 4 Geo. II. c. 21). If any of the King's ambassadors in foreign nations have children there of their wives, being English women, by the common law of England, the children are natural born subjects, and yet they are born out of the King's dominions. *Calver's Case*, 7 Rep. 18. Cro. Car. 601. And such were inheritable before the statute, but the statute makes it clear. 2 Vin. A. 265. Such children must be legitimate. *Shedden v. Patrick*, 1 Macq. H. Lds. 535. The son of an Irish peer, although born in France, of a French mother, is a natural born subject. *Lord Trimelston's Case*, Lds. Jour. 1832. And a son so born may be elected to Parliament. *Dundalk Election*, 1 P. R. & D. 92. A person born in New York in 1830, the son of a British subject, who had emigrated from Ireland a short time previously, and who came to Canada a year or two after his birth, held to be a British subject. *Reg. ex rel. McVean v. Graham*, 7 U. C. L. J. 125. A natural born subject does not lose his rights by residing in a foreign country or by holding office there, and his son being within 4th Geo. II. c. 21, is a British subject. *Doe dem. Hay v. Hunt*, 11 U. C. R. 367. A natural born subject continuing to reside in the United States after the Treaty of 1783 : *Held*, he thereby lost his status as a British subject, and he and his children became aliens. *Doe dem. Thomas v. Acklam*, 2 B. & C. 779. *Doe dem. Patterson v. Davis*, 5 O. S. 494. But where the children of such a person came to Canada in 1792 and 1794 and took the oath of allegiance, the disability was removed by

pending, according to the provisions of "*The Voters'* Rev. Stat. s. 9.

U. C. Act 9 Geo. IV. c. 21. *Montgomery v. Graham*, 31 Q. B. 57. When a voter was born in the U. S., his father and grandfather being U. E. Loyalists, he was held to be a British subject. *Stormont Election (Place's Case)*, 7 C. L. J. N. S. 213. (2) *Grandchildren of natural born subjects born out of the allegiance of the Crown*. (a) 13 Geo. III. c. 22. "That all persons born or who hereafter shall be born out of the allegiance of the Crown of England, or of Great Britain, whose fathers were, or shall be, by virtue of the statute (7 Anne, c. 5, and 4 Geo. II. c. 21), entitled to all the rights and privileges of natural born subjects of the Crown of England or of Great Britain, shall and may be adjudged and taken to be and are hereby declared and enacted to be natural born subjects of the Crown of Great Britain to all intents constructions and purposes whatsoever as if he and they had been or were born in the Kingdom." An Englishman (A), who went to the United States after the Treaty of 1783, and became a citizen of, and had taken the oath of allegiance to, the United States, thereby abjuring his allegiance to the Crown of Great Britain, who held office and voted there, married an American woman, and had a son (B), born there, who resided there until his death in 1835 and who left a son (C, grandson of A), also born in the United States: *Held*, that the grandson was by virtue of the 13 Geo. III. c. 21, a British subject. *Fitch v. Weber*, 6 Hare, 57, s. c. 12 Jur. 76. *Barrow v. Wadkin*, 24, Beav. 327; approved in. *Sharpe v. De St. Sauveur*, L. R. 7 Ch. 343. The privileges conferred by the statutes in question upon the children and grandchildren of the British born subjects, are the privileges of such children and grandchildren, and not of the parent, conferred upon them for the benefit of the State itself. *Per Wigram*, V. C. 12 Jur. 76. And such grandson may vote at elections. *Lincoln Election, Andrew's case*, 2 App. R. A natural born subject may be a citizen of the United States for the purposes of commerce. *Wilson v. Marryatt*, 8 T. R. 31. (3) *Foreign Protestants settling in British America*. (a) 13 Geo. II. c. 7. Foreign Protestants residing for seven years in any of His Majesty's Colonies in America and not absent for more than two months at one time during such seven years, and who take and subscribe the oaths, and declarations required by the 1 Geo. I., shall be deemed natural born subjects. (See also 20 Geo. II. c. 44). (b) 2 Geo. III. c. 25. Foreign Protestants who shall serve in the Royal American Regiment, or as Engineers, in America for two years, and who shall take and subscribe the oaths and declarations required by 1 Geo. I. shall be deemed natural born subjects. W. applied to have his name entered on the register of voters. He admitted he was a German by birth, but that he had become a British subject by service in the British Army in Egypt and the Peninsula,

Lists Act," or of this Act, be entitled to vote at elec-

and in England, and by his holding a pension from the British Government: *Held*, that not having served in a military capacity in British America, he was not entitled to be entered as a voter. *Weberstadt's Case*, 1 Stephens on Elections, 368; even though he had taken the oath of allegiance on entering the army. *Christensen's Case*. *Ibid.* 370. (4) *Foreign seamen serving on British ships*. The statutes regulating naturalization under this provision, are 6 Anne, c. 37; 13 Geo. II. c. 3; 22 Geo. II. c. 45; 20 Geo. III. c. 20. An alien who has served on board an English man of war, for four years, in time of war: *Held*, to be a natural born subject under 13 Geo. II. c. 3. *In re Giraud*, 32 Beav. 385. The Canadian statutes relating to aliens are as follows: (1) 9 Geo. IV. c. 21 (1828). (a) All persons who have received grants of land or held office under the great or privy seal or sign manual of the Governor; and all persons who have taken the oath of allegiance; and all persons who were domiciled in Upper Canada before 1820, and the children of such persons, provided they take the oath of allegiance; and (b) All persons domiciled in Upper Canada on the 1st March, 1828 and residing seven years therein (with certain exceptions as to minors) who take and subscribe the oath of allegiance before the Registrar of the County, shall be deemed to be natural born subjects. (2) 4 & 5 Vic. c. 7, (1841). (a) All aliens domiciled on the 10th February, 1841, and resident seven years before or from that date (temporary absence without a renewal of foreign allegiance not to interfere), on taking the oath of allegiance, and making the declaration required by the Act, within twelve months after becoming entitled; and alien minors within twelve months after attaining sixteen years of age, taking such oath, to be deemed natural born subjects. (3) 9 Vic. c. 107 (1842). Aliens domiciled five years, presenting a memorial to the Governor, and taking and subscribing the oath of allegiance, may obtain from the Governor certificates of naturalization, granting them the rights and capacities of British subjects. (4) 12 Vic. c. 197, (1849). (a) Aliens domiciled before 10th February, 1841, and still domiciled (23rd November, 1849), and their children, provided they take the oath of allegiance. (b) Aliens domiciled on the 10th February, 1848, not included in the above, and resident seven years before or from that date, here or elsewhere in Her Majesty's dominions, provided they take the oath of allegiance. (c) Aliens domiciled on the 23rd November, 1849, or who shall thereafter come to Canada, and shall reside continuously for seven years therein, provided they take and subscribe the oaths of allegiance and residence prescribed by the Act, and cause them, and a certificate of residence to be obtained from the Justice of the Peace, to be filed

tions of members to serve in the Legislative

of record in the Court of Quarter Sessions, and have the said certificate read in open Court on the first day thereof, and if, on the last day, the facts are not controverted, the Court shall direct the certificates to be filed of record, and thereupon such aliens shall be admitted and confirmed in the rights and privileges of British birth; and the Court may grant a certificate of naturalization. The period of seven years was afterwards altered to five (18 Vic. c. 6), and three (22 Vic. c. 1). See C. S. C. c. 8. (5) 12 Vic. c. 27, (1849); C. S. C. c. 6, s. 56. Aliens who would, upon taking the oath of allegiance, become entitled to the privileges of British birth without further residence or other formality, may take such oath before any Deputy Returning Officer at an election, and the oath so taken shall confer the civil and political rights of a British subject, (6) 31 Vic. c. 66, Can., (1868). Aliens domiciled on the 22nd May, 1868, or who shall thereafter come to Canada, and shall reside continuously therein for three years, and take and subscribe the oaths of allegiance and residence, and who take similar proceedings, before the Court of Quarter Sessions to those mentioned in (4) (c) shall thereby become British subjects. (7) 34 Vic. c. 22 Can. (1871). (a) Aliens who, prior to the 1st January, 1868, had taken the oaths of allegiance and residence required by the Naturalization Laws, are admitted to the privileges of natural born subjects. The evidence shall be the certificate of the Justice before whom the oaths were taken, or the oath of the party in the form prescribed. (b) Aliens domiciled on the 1st July, 1867, and still residents, who take and subscribe the oath of allegiance and residence as provided in the Act, shall be entitled to the privileges of British birth. The oaths so taken are to be filed with the Clerk of the Peace, who shall file the same, and issue to the party a certificate of naturalization. The judgment of the Court that an alien has been admitted to citizenship is conclusive. *Stark v. Chesapeake Insurance Company*, 7 Cranch. U. S. 420. The act of the Court admitting a citizen is a judgment of that Court, and the Supreme Court of the United States cannot look behind it, and enquire on what testimony it was pronounced. *Spratt v. Spratt*, 4 Peters U. S. 393. See also the observations of Marshall, C. J., as to an individual being exposed to the disabilities of alienage on account of some error in the Court, not apparent on the record of his admission. *Ibid.* The production of the certificate of naturalization is sufficient proof of naturalization, without showing compliance with all the requisites of the law. The judgment of a Court admitting an alien, is final and conclusive. *Ritchie v. Putnam*, 13 Wend. 524. *People v. Pease*, 30 Barb. 604. *Banks v. Walker*, 3 Barb. Ch. 433. *Campbell v. Gordon*, 6 Cranch. U. S. 176. The English Naturalization Act of 1870 (33 Vic. c. 14), has varied in many important particulars the common law doctrines respecting allegiance.

Assembly of this Province, (t) that is to say:—

Real property qualification.

Bona fide owner, tenant, or occupant.

Value of real property necessary.

Cities, \$400.

Towns, \$300.

Villages and Townships, \$200.

Firstly. Every male person entered on the revised assessment roll, upon which the voters' list to be used at the election is based, for any City, Town, Incorporated Village or Township, for real property of the value hereinafter mentioned, and being, at the time of the election, either the actual *bona fide* owner, tenant or occupant of such real property, or, in case he has ceased to be such owner, tenant or occupant, (u) a resident of the Electoral District. (v) See 32 V. c. 21, s. 5 (1) and Form O.

2. Such person must (subject to the provisions hereinafter contained) have been rated on such assessment roll as the owner, tenant or occupant of real property of the actual value of not less than the following:—

In Cities, four hundred dollars;

In Towns, three hundred dollars;

In Incorporated Villages, two hundred dollars;

In Townships, two hundred dollars. See 32 V. c. 21, s. 5 (1).

(t). The mode of definition or enumeration adopted in this clause is that of a positive enactment which seems to prescribe three conditions as requisite to the existence of the franchise; *firstly*, that the voter shall be interested in real property, as owner, tenant, or occupant; *secondly*, that this property shall be of a given value at least; and *thirdly*, that he shall be entered on the proper assessment roll as the owner, tenant, or occupant of such real property. The repetition of the words, "shall be entitled to vote at elections of members of the Legislative Assembly," may afford room for the argument that the franchise is conferred as a substantive and potential right, independent of the voters' list. *Per Moss, C. J. A., Lincoln Election*, 2 App. R.

(u) "Ceased to be such owner," &c. The date of the loss of ownership is not mentioned in this section, but may be ascertained by reference to the oath required of voters on real property; from which it may be inferred to be "after the date of the final revision of the Assessment Roll."

(v) The residence within the Electoral District after the loss of the ownership of the assessed property must be a continuous residence. See notes (q) page 11 (x) post.

3. When any real property is owned or occupied jointly by two or more persons, (*w*) and is rated at an amount sufficient, if equally divided between them, to give a qualification to each, then each of them shall be deemed rated within this Act ; otherwise none of them shall be deemed so rated. 31 V. c. 21, s. 5 (2).

Joint owners
if rated suffi-
cient to
qualify all,
each may
vote.

Secondly. Subject to the provisions hereinafter contained, every male person who is residing at the time of the election in the local Municipality in which he tenders his vote, and has resided therein continuously (*x*)

Income
franchisee.

(*w*). This is similar to s. 27 of the English Act, 30 & 31 Vic. c. 102 ; but that clause also provides that not more than two such persons, being joint occupiers, shall be entitled to vote, unless they shall have derived title by descent, succession, marriage or devise, or are partners in business. See *Rogers v. Harvey*, 28 L. J. C. P. 17. Joint tenants and tenants in common of freehold estates, and for freehold interests, have a right to vote, for the former are seized individually, *per my et per tout* ; the latter have each a separate interest in their respective shares, and this, notwithstanding 7 and 8 William III., c. 25, s. 7 (Splitting Act), which provides that no more than one single voice shall be admitted to vote for the same house or tenement. Heywood on Elections, 44.

(*x*) The residence must be an actual occupation (*animo residendi*), by himself or his family. *Withorn v. Town Clerk of Tewkesbury*, 7 M. & Gr. 1. Where a man had a residence in one place where his wife and family resided, but he slept there once or twice a week ; the rest of his time he spent in rooms found for him by his employers, and with an invalid of whom he had charge : *Held*, that his residence was where his family resided. *Taylor v. Overseers of St. Mary Abbott's*, L. R. 6 C. P. 309. But see *Bond v. Overseers of St. George*, *Ibid.* 312. Absence on duty with the Militia, which is a compulsory legal absence, but temporary, is not a disqualification within the statute which requires voters to be resident for six months prior to the election. *Rex v. Mitchell*, 8 East. 511. But an officer of the regular army who is subject to the will and pleasure of the Queen, as to residence, is not *sui juris* and cannot therefore have an *animo residendi*. *Ford v. Hart*, L. R. 9 C. P. 273. Where a person was sentenced to six months' imprisonment for an assault, and while in the county gaol, had his business carried on by his servant on his behalf, in the town in which he had previously lived, (not the town of the gaol). *Held*, that as the voter, by his own criminal act, had debarred

Continuous residence. since the completion (y) of the last revised assessment roll of the Municipality, and derives an income from some trade, calling, office or profession (z) of not less than four hundred dollars annually, and has been assessed for such income in and by the assessment roll of the Municipality, upon which the voters' list used at the election, is based. (a) 37 V. c. 3, s. 1.

Income_over \$400.

Assessed therefor.

himself of the power of continuous residence in the borough, he had not the necessary qualification to vote. *Powell v. Guest*, 18 C. B. N. S. 72, s. c. 34 L. J. C. P. 69. "I assume during the time he was in prison he was not *sui juris* and not at liberty to return, in consequence of a criminal act of his own." *Per Erle, C.J., Ibid.* A voter between the revision of the lists and the polling, had been sold up and obliged to leave his house; since which time he had lived at an inn in the borough; *Held* that the voter had broken his residence since the revision and was not entitled to vote. *Bewdley Election (Evans' Case)* 1 O. & H. 174. See further note (y), page 11.

(y) These words "completion of the last revised Assessment Roll," when read with the oath for income voters, will be found to mean "the date of the final revision and correction of the Assessment Roll." See note (u) page 13.

(z). Only those who derive their income from professional, commercial, or mechanical, labour — the working-men — are entitled to this franchise. Persons deriving their income from investments solely, are not within the Act. There is nothing in this, or the *Voters' Lists Acts*, providing for the case of partners assessed for a joint income, as in the cases of joint owners of real property (sub-s. 3, *firstly*), or of farmers' sons (sub-s. 2, *thirdly*). Their shares in the joint income are often unequal. The Statute gives the franchise to the person actually in receipt of the proper amount of income; and it may be found, if both the partners are entitled to be entered on the Voters' Lists, because the joint income is large enough to give a qualification to each, that the larger income of one, is being used to confer the franchise on the other, whose separate share in such joint income does not come up to the statutory amount. Under the former Election Act, "partners in business," assessed for real property, were required to establish the value of their separate shares therein, before the Court of Revision or County Judge, before they could be entered on the Voters' List. C. S. C., c. 6, s. 4, sub-s. 3.

(a) See note (t), page 45.

2. In case the voters' list to be used at an election is that of a year preceding the year in which the writ of election bears date, the right of voting at an election in respect of income shall belong to those only on the said list who had paid the municipal tax on such income for such preceding year, on or before the thirty-first day of December next before the election. (b) 39 V. c. 10, s. 5.

Income voters must have paid taxes for year preceding election, if writ issues before collector's roll.

3. In case the voters' list to be used at an election is that of the year in which the writ of election bears date, and the Collector's roll for the same year has been in the Collector's hands for at least one month before the date of the writ of election, the right of voting in respect of income shall belong to those only who had, before the date of the writ, paid the municipal tax on such income for the said year. 39 V. c. 10, s. 6.

Or, if writ after collector's roll, taxes must be paid one month prior to writ.

Thirdly. Every farmer's son who is resident at the time of the election in the Electoral District in which he tenders his vote and has resided therein, on the farm of his father or mother for twelve months next prior to the return by the Assessors of the assessment roll (c) on which the voters' list used at the election is based, and who has been duly rated on the assessment roll for such farm at an amount sufficient to give a qualification to vote at the election. 40 v. c. 9, s. 3.

Farmers' sons.
Resident on farm twelve months before return of assessment roll.

2. If there are more sons than one so resident, and if the farm is not rated and assessed at an amount sufficient to give a qualification to vote at the election, the father and so many elder sons to

Father and so many elder sons to

(b) See note (l) page 66.

(c) The period of residence required of farmers' sons is longer than that required of income voters. (1) For Income voters it is: a continuous residence in the local municipality from the date of the revision of the Assessment roll (July or August), on which the voters' list is based, to the time of the election. (2) For Farmers' sons it is: a continuous residence on the farm for twelve months prior to the return of the assessor of the Assessment Roll (April or May) on which the voters' list is based, and in the Electoral District from thence to the date of the election.

have votes
an assess-
ment will
qualify,

cient, if equally divided between them, to give a qualification to vote, to the father and all the sons, where the father is living, or to the sons alone, where the father is dead and the mother is a widow, then the right to vote under this Act shall belong to and be the right only of the father and such of the eldest or elder of said sons to whom the amount at which the farm is rated and assessed will, when equally divided between them, give the qualification to vote; and if the amount at which the farm is so rated and assessed is insufficient, if equally divided between the father (if living) and one son, to give to each a qualification to vote, then the father shall be the only person entitled to vote in respect of such farm. (d) 40 V. c. 9, s. 2.

Temporary
absence of
four months
not to dis-
qualify.

3. Occasional or temporary absence from the farm for a time or times not exceeding in the whole four months of the twelve hereinbefore mentioned, shall not operate to disentitle a farmer's son to vote under this Act. (e) 40 V. c. 9, s. 3, *last clause*.

(d) The Farmers' Sons' Franchise may be practically worked out thus: A farm assessed for \$1,000 in a township, will give a father, or stepfather, who is the owner and actual occupant, and four sons, the Parliamentary franchise; or in case the mother is the owner and actual occupant, it will give five sons the franchise.

(e) The Farmers' Sons' franchise depends upon the actual occupation of the farm, by two persons; the father, (or mother, or step-father) as owner, and the son, who claims the franchise. The title of the father must be "owner," (see notes to s. 2, sub-s. 1, page 86); and his possession of the farm must be "actual." The terms "actual occupation" occurs in the English Settlement Acts, and has been held to mean that there must be an exclusive occupation, in fact, of the whole premises, without lodgers. *Rex v. St. Nicholas, Rochester*, 5 B. & Ad. 219. *Rex v. Berkswell*, 6 A. & E. 282. It appears very doubtful whether the principle of these decisions can be applied to the cases of voters. *Elliott on Parliamentary Electors* 96. "The word 'actual' in the oath to be taken by the householder is the foundation of the argument against the claim to vote. I think that the epithet 'actual' must be applied to the fact of residence or occupation and not to the character or nature of the occupation. The voter must be actually in occupation,

Fourthly. All Indians or persons with part Indian blood who have been duly enfranchised, and all Indians or persons with part Indian blood who do not reside among Indians, though they participate in the annuities, interest-moneys and rents of a tribe, band or body of Indians, subject to the same qualifications in other respects, (f) and to the same provisions and restrictions, as other persons in the Electoral District. 39 V. c. 10, s. 4. See 38 V. c. 3, s. 15.

Indians to vote if enfranchised, but to have same qualifications as other voters.

but his occupation need not be a personal occupation of every room in the house. *Per Crampton, J., Duigenan's Case*, Alcock's Reg. Cas. 116. Neither a right of possession as owner, nor a right to occupy as tenant, necessarily implies the exercise of that right in fact. *Rogers' Election Law*, 64. See also *Brewer v. McGowen*, L. R. 5, C. P. 239. *Durant v. Carter*, L. R. 9 C. P. 261. *Ford v. Pye*, *Ibid.*, 269. *Webster v. A'iton-under-Lyme*, L. R. 8 C. P., 281. *Webster v. Lane*, *Ibid.*, 306. A permanent unbroken dwelling in a particular place, is not required to constitute residence; absence, no matter how long continued, if there be a power of returning, and an intention to return, will not prevent a constructive legal residence; but if a person has relinquished the dominion over his house for any period, however short, or has abandoned the intention to return to it, it cannot be said that such person has even a constructive residence. *Rex v. Sergeant*, 5 T. R. 466. *Rex v. Duke of Richmond*, 6 T. R. 560. *Regina v. Brighthelmstone*, 24 L. J. Q. B., 65. Generally speaking a man cannot have more than one domicile, but he may have more than one residence. *Somerville v. Somerville*, 5 Ves. 789, 1 Peck. 316 n. *Northallerton Election (Marshall's Case)*, 1 O. & H. 171.

(f) An Indian who is a British subject, and otherwise qualified as to property, has an equal right with any other British subject to hold the office of Reeve of a municipality, even though not enfranchised, and though receiving, as an Indian, a portion of the annual payments from the common property of his tribe. *Regina ex rel. Gibb v. White*, 5 Pr. R. 315. See also *Doe dem. Sheldon v. Ramsay*, 9 U. C. R. 105; *Regina v. Baby*, 12 U. C. R. 346; *Totten v. Watson*, 15 U. C. R. 392. An agreement with an Indian, to work the farm belonging to such Indian, on shares,—which would give the party so working on shares, a right to vote, as an occupant: *Held*, illegal, and such party was properly found guilty of a misdemeanor, *Regina v. Hagar*, 7 C. P. 380.

Voters where
no assess-
ment rolls in
North Vic-
toria, East
Peterboro',
North Has-
tings, North
Renfrew,
South Ren-
frew, Mus-
koka and
Parry Sound,
and Algoma,
to be
(1) of age,
(2) subjects,
(3) owners, or
(4) resident
householders

Fifthly. In such of the Municipalities, Townships, and places in the Electoral Districts mentioned in the seventy-eighth section of this Act, as have no assessment roll, and in all parts of the Electoral District of Algoma, (g) every male person of the full age of twenty-one years, being a subject of Her Majesty by birth or naturalization, and not otherwise disqualified, who is at the time of the election actually and *bona fide* the owner of real estate, in the Electoral District for which he claims to vote, of the value of two hundred dollars or upwards, (h) or who is, at the time of the election, a resident householder of such place, and has been such owner or householder for the six months next preceding the election. 38 V. c. 3, s. 23.

(g). In the places here provided for, the person claiming to be entitled to vote, is to declare his name, place of residence, and occupation or calling, and also the property in respect of which he claims to be entitled to vote, and whether he is claiming as owner, tenant, or occupant, of such property; all of which the Returning Officer is to cause to be entered upon the voters' list. *Election Act*, s. 92. The localities are named in the marginal note.

(h). The voter makes his own representation of the value and title of his property; but, if required, he must affirm that representation, by taking the oath provided for voters, in places where there is no Assessment Roll and Voters' Lists.

APPENDIX.

PRACTICAL SUGGESTIONS FOR THE REVISION OF VOTERS' LISTS.

In an English work of some repute (a) it is recommended that "for the work of the Revision of the Voters' Lists, a central manager is essential. The one selected should be active, intelligent, and of good standing; and to him it is the most prudent course to confide the entire business of revision, without the needless incumbrance of a committee. To each polling district an agent should be appointed, to whom the entire business of that district should be committed, under the direction of the manager" (b).

(a) Cox and Grady's *Law of Registration and Elections*, lxxv.

(b) In addition to local election managers, it is known that the two great political parties in England have in their service a General Election Manager, and the duties of such an officer have thus been sketched in a legal periodical of a certain political leaning :—

"The office of Election Manager is very important. He does for the whole party at headquarters, what the local managers do for their parties in the several constituencies. He is the wire-puller of his party. For this purpose he has a carefully compiled and noted-up register of every constituency in the United Kingdom. It is his duty to ascertain and keep on record the past history, present condition, and peculiar character of every constituency, including the cost of a contest, the chances of success, the influences on both sides, if the electors can be bought, and at what prices; and, in fact, to keep duly posted up in a ledger, for ready reference, all the information necessary, not merely for candidates, but to enable ministers, *in esse*, or *in posse*, to ascertain the probable results of an election, come when it may. Moreover, it is his business to procure candidates for the various constituencies, for each according to its needs. He sends a rich tradesman

In this country we are more favourably inclined to make use of "the needless incumbrance of committees;" as experience has proved that, when efficient, they are excellent workers and experienced engineers in practically moving and regulating the mechanics of an election contest. In many constituencies, the central organization takes the shape of a political association, with local branches in each municipality. To enable such committees or associations to deal practically with the Voters' Lists, the following suggestions are offered :—

PROCEEDINGS FOR THE REVISION OF THE LIST.

1. Let several copies of the Voters' List be procured; and also a blank book of about the same size, or larger, for each polling subdivision, and cut out the pages belonging to such sub-

to an expensive borough; a radical lord to a democratic borough; a fluent lawyer to a borough where dissent predominates; a liberal landed man to a wavering county; and so forth. The 'assistance' which the secret service fund of the Reform, or the Carleton Club, as the case may be, provides, for certain candidates, under certain circumstances, to be expended in the most effective manner, is given under the advice, if not with the personal aid, of the confidential manager. Local electioneers wanting candidates, apply to the election manager, who keeps a list of candidates wanting constituencies. They state to him what kind of man they require,—that is to say, the length of purse they look for; and it is through the manager, and usually at his office, that the interesting interview takes place at which the bargain is struck. When an election comes on, it is the manager's business to see that all necessary aid is given to his own candidates. He must keep rivals from the ground, bring influences to bear, and contrive to win,—if possible. Should there be a petition, he negotiates; he squares with petitions *contra*; he settles if he can; if he cannot settle, he fights; and if his candidate is beaten, he consoles him with the promise of the next vacancy. It will be seen from this, that the office of election manager, either for the Carleton or Reform Club, is one of much importance, demanding rare qualities of discretion, skill, caution, and courage. It will be apparent, indeed, that the foremost quality for such an office, a large portion of the duties of which, consists of negotiations that cannot be committed to paper, and for which the only possible security that can be given, is the honor of the parties concerned, is an integrity upon which implicit reliance can be placed." 47 *Law Times* (1869), p. 390.

divisions, and paste them into the book on each left-hand page, leaving the right-hand page for memoranda or observations.

2. Rule two columns on the left of the list, one to indicate how each person voted at the last election, (if known); the other to indicate how such person is likely to vote at the coming election.

4. With this list, carefully examine the Assessment Roll, and ascertain and note on the right hand page, the additions and omissions suggested by such examination:—

First, Whether the Christian and surnames of those persons favorably inclined, and of those who are doubtful, are correctly entered and spelled; and whether the number of the lot, and concession, or other local description of the property is correctly given. This should be attended to carefully, otherwise there may be a loss of votes, as a person desiring to vote, may hesitate and have difficulty in swearing, at the poll, that he is the person intended to be named in the list. The qualification under which each person claims to vote, should appear opposite his name, for the purpose of identification. Thus (1) if owner, tenant or occupant, of real estate then it should state the fact, and describe by number or other proper designation the particular property; (2) if in respect of income, then the amount of income, and the place of residence in the Municipality, of the voter; (3) if voting as a farmer's son, then as such in respect of the particular farm by the number of the lot or other known designation; (4) where a voter has the requisite qualification in more than one polling sub-division his name should appear on the voters' list for each sub-division; also referring to other sub-divisions, thus, *see sub-division [or sub-divisions] No. . . .* See pages 7, 9, 11, 12, and 21.

Second, Ascertain what is the date of the "final revision and correction of the Assessment Roll," referred to on page 13, note (u).

Third, Ascertain what persons named in the list and assessment roll, come within the classes of cases mentioned in notes (m) page 22 and (p) page 23.

Fourth, Ascertain what persons in the list will be of the age of 21 years, at any time within 60 days from the final revision and correction of the assessment roll. See notes (i) page 5, and (s) page 25.

Fifth, Ascertain what persons, although duly qualified and entitled to vote, have been improperly omitted from the list. See notes (k) page 20, (q) page 24, and (s), page 25; and page 76.

Sixth, If a voter has more than one qualification; for example, if he be entitled to vote in respect of real property and is also rated in respect of income, see that he is rated for both in the list. See page 45.

In determining who are, and who are not, entitled to vote, the assessment roll is not conclusive, as to the value of property, or the amount of income; but evidence may be given

before the judge to show the real value of the property, or the amount of the income. See page 23.

Let the examination be conducted methodically: examine *first* the names of the persons entered on the list, and consider all questions affecting them as voters; *second*, the property assessed, and its value, and the right to vote of any other persons interested in that property, as owners, tenants, occupants, or as farmers' sons; also as to income voters; *third*, see that the assessed titles of the various owners, tenants, occupants, farmers' sons, and income voters, are correctly entered on the list.

4. After having carefully examined the list, if it appears that corrections should be made, or that certain persons should be struck off, or added; carefully prepare a notice in the forms given in the schedule on page 125.

The notice *must* be given to the Clerk of the Municipality, or left for him at his residence, or place of business, *within thirty days after the Clerk has posted up the voters' list in his office.*

If the office of Clerk be vacant, then give the notice to, or leave it for, the head of the Council of the Municipality, *i. e.*, the Mayor or Reeve, at his residence or place of business.

No fees are to be paid.

The Judge of the County Court will then appoint a day for hearing the complaints.

When you have given the notice, as mentioned above, devote your attention to investigating the evidence to support the alterations and additions which you consider should be made. This should receive immediate attention, and each committee-man's work should be properly defined for him, and promptly attended to, and should not be left to the last moment.

If the persons whom you desire to give evidence before the judge, on the day appointed, refuse to attend; or you do not think that they will attend to give evidence, unless compelled so to do; obtain a subpoena or order from the County Court, as mentioned on page 30, and have the proper number of copies made and examined by the party who is to serve them. Then have a copy served on each person whose attendance you require. By the subpoena or order, such persons may be compelled to produce such papers and documents as you think necessary. The person served with a subpoena (with the exceptions mentioned hereafter) will be entitled to his witness fees according to the Division Court rates, which are as follows:—75 cents per day for attendance at Court, and 10 cents per mile travelling expenses, or Railway fare actually paid.

You need not, however, pay the fees if the person served is a person complaining of the lists, or is a person in respect of the insertion or omission of whose name upon the list, the complaint is made, provided he be resident within the municipality the list of which is the subject of complaint, or within the municipality in which the Court is held. See page 31.

On the day appointed by the judge for hearing the complaints, attend with your evidence fully prepared. You should also be ready to prove the service of your subpoena, or order, (by the party who has served them) with a view to having the hearing adjourned, or the vote struck off, should the witness disobey the subpoena. See page 32.

If any Appellant or complainant, entitled to appeal, dies or abandons his appeal or complaint; or having been on the alphabetical list made and posted by the Clerk, is afterwards found not entitled to be an appellant, the Judge may if he thinks proper, allow any other person who might have been an appellant, or complainant, to intervene and prosecute such appeal, or complaint, upon such terms as the Judge may think just. See page 41.

5. After having made out your lists of complaints, let them be signed by some person whose right to be a voter cannot be questioned (see page 20); and then served *personally*—if possible—on the Clerk, or head of the Council, as above directed.

“FINAL REVISION OF THE ASSESSMENT ROLL.”

The date of the final revision of the Assessment Roll may be ascertained from the following rules :—

1st. In cities, towns, townships and villages (when no by-law is passed, altering the statutory dates for making the assessment.) (a) *If no Appeals to the Court of Revision*—on the day the Court finally passes the roll as certified by the Clerk. (b) *If there were Appeals to the Court of Revision, but no Appeals to the County Judge*—on the 6th day of July. (c) *If there were Appeals to the County Judge, from decisions of the Court of Revision*—on the day the County Judge finally decides such appeals—which must be before the 1st August.

2nd. If the County Council has passed a by-law for taking the assessment in towns, townships and villages between the 1st day of February and the 1st day of July in each year, the above dates will not apply.

3rd. In cities and separated towns (where a by-law is passed altering the statutory dates.) (a) *If no Appeals to the Court of Revision*—on the day the Court finally passes the roll as certified by the Clerk. (b) *If there were Appeals to the Court of Revision, but no Appeals to the County Judge*—on 21st November. (c) *If there were Appeals to the County Judge*—on the day the County Judge finally decides such Appeals, which must be before the 31st December. See page 13.

PERSONS WHO ARE ENTITLED TO VOTE.

(1.) *Owners.*—Every person who owns property of the value mentioned in the Act, in his own right, or in right of his wife for an estate for life, or any greater estate (*either legal or equitable*).

(2.) *Tenants*.—Every tenant of property, of the value mentioned in the Act.

Where the property is assessed at the statutory amount, and is rented, both owner and tenant have the right to vote in respect of such property.

(3.) *Occupants*.—Every person who, although he is not the owner or tenant, is yet the occupant of property of the value mentioned in the Act, being in possession of it, and enjoying the revenues and profits for his own use.

(4.) *Farmers' Sons*.—By which is meant every young man of 21 years of age and upwards, who though not otherwise qualified to vote, has for 12 months prior to the return of the Assessment Roll by the assessor, resided with, and on the farm of, his father, or step-father, or mother. This franchise belongs only to the sons of owners and actual occupants. By "*farm*" is meant land actually owned and occupied by the father, step-father, or mother, not less in quantity than 20 acres. In determining the right of persons to vote as "*farmers' sons*" the question of the value of the farm is of importance. Only so many of the elder sons—with the father or step-father (but excluding the mother's share if she is owner)—as the assessed value of the farm will qualify,—rating each at \$200—should be entered on the Voters' List.

All such persons, referred to in paragraphs (1), (2), (3) and (4), should be entered on the last revised and corrected Assessment Roll; but if not so entered, application should be made to the Judge for an order under sec. 22 of the Voters' List Act, to have them entered on a Supplementary Assessment Roll.

(5.) *Income Voters*.—Every person who has continuously resided in the municipality since the completion of the last revised Assessment Roll; and, who at the date of such revision, and for 12 months previously, was in receipt of an income of not less than \$400 per annum. The names of such persons must be entered upon the Assessment Roll by the Assessor, as no appeals can be made subsequently, to have persons assessed who are entitled to become voters on income. See page 45.

PERSONS WHO ARE NOT ENTITLED TO VOTE.

The following persons are not entitled to vote, although they may be entered on the Assessment Roll, for the requisite amount of property, or be in receipt of a sufficient income; and they may be struck off the Voters' List, on complaints, made to the County Judge:

(1.) *Aliens, i. e.*, Persons not born in any country under the sovereignty of the British Crown, and who have not become naturalized subjects.

(2.) *Minors*.—Persons who are under 21 years of age, or who will not attain that age, within 60 days from the date of final revision and correction of the Assessment Roll.

(3.) *Officials*.—Persons disqualified by office, under s. 4 of the Election Act.

(4.) *Corrupt Practices*.—Persons guilty of corrupt practices at elections for the Legislative Assembly. See pages 56, note (e), and 64, note (j).

(5) *Voters on Real Property*. (a) That he has no *bona fide* title or interest in the real property, by giving up possession or removing from (if tenant or occupant), or selling (if owner), the assessed property *before the date of the final Revision* of the Assessment Roll. (b) That the Property is not of the value Assessed. (c) Joint ownership, or joint tenancy, or joint occupancy with some other person, named, or not named, on the Roll or Voters List, where the real property is not assessed at a sufficient amount to give a qualification to each person interested therein, *i.e.*, in Townships, \$400 for two, or \$600 for three, etc. (d) That he has ceased to be owner, tenant or occupant of such real property, by giving up possession, or selling, *after the final revision* of the Assessment Roll, and has *removed from the Constituency*.

(6) *Voters in Respect of Income*. (a) That he was not in receipt of a *bona fide* income to the amount of \$400 at, and for the twelve months prior to the date of, the final revision of the Assessment Roll. (b) That he was not assessed for income of not less than \$400 on the last revised Assessment Roll. (c) That he did not reside in the *Municipality* (City, Town, Village, or Township) where assessed for Income, at the date of the final revision of the Assessment Roll. (d) That he did not pay his Municipal Taxes or income prior to the period prescribed by law.

(7) *Farmers' Sons*. (a) That the father or mother or step-father, of the farmer's son, was not the *owner and actual occupant* of the farm assessed. (b) That the assessed property is not a "farm" as defined by the statute. (c) That he does not come within the statutory definition of a son, or step-son, of such owner. (d) That the property is not assessed at a sufficient amount to give the father (or step-father) and sons, the requisite (\$200 in Townships) qualification to each. (e) That he has not resided on the farm for twelve months before the date of the assessor's return of the Roll. An occasional or temporary absence from the farm of a time or times not exceeding in the whole four months, will not disentitle a farmer's son to vote. (f) That he does not reside in the constituency.

ESTIMATED RESULTS OF AN ELECTION.

In preparing for an election, the general results of the approaching contest may be estimated by the answers which can be given to the three following questions, in each polling subdivision, or local municipality:

1. How many of the voters who supported us at the last election, are dead, or have removed from the constituency ?

2. How many of the voters who supported us at the last election, are now supporting the other side, or will not vote ?

3. Of the new voters added to the voters' list since the last election, which side will the majority of such new voters support, and vote for, at the coming election ?

SCHEDULE OF FORMS.

FORM 1. (Section 2.)

FORM OF VOTERS' LIST.

Voters' List, 18 Municipality of

POLLING SUB-DIVISION, No. 1, COMPRISING, &c. :—(*Giving the limits.*)

PART I.—Persons entitled to vote at BOTH Municipal Elections and Elections to the Legislative Assembly.				
No. on Roll.	Name.	Lot.	Con. or Street.	—
6	Anderson, Henry.	N W $\frac{1}{2}$ 6	3	Owner.
14	Andrews, John.	Wly 14 acres 8	1	Tenant.
1	Archer, James.	2	6	Income.
50	Brown, Simon.	W. $\frac{1}{2}$ 9	2	Occupant.
71	Burton, Samuel.	E $\frac{1}{2}$ 17	4	See Sub-Division, No.
	&c.	&c.	&c.	&c.

PART II.—Persons entitled to vote at Municipal Elections ONLY.				
No. on Roll.	Name.	Lot.	Con. or Street.	—
4	Archer, Henry...	4	3	Owner.
82	Burke, Edmund...	W $\frac{1}{2}$ 17	4	Farmer's Son.
	&c.	c.	&c.	&c.

PART III.—Persons entitled to vote at Elections to the LEGISLATIVE ASSEMBLY ONLY.

No. on Roll.	Name.	Lot.	Con. or Street.	—
43 8	Ackroyd, James.. Ames, Joseph....	N $\frac{1}{2}$ 3 3	4 7	Tenant. Owner.

POLLING SUB-DIVISION, No. 2, COMPRISING, &c.—(Giving limits.)

PART I.—Persons entitled to vote at BOTH Municipal Elections and Elections to the Legislative Assembly.

No. on Roll.	Name.	Lot.	Con. or Street.	—
18 40	Akers, Dan..... Broom, Ezekiel..	8 13	4 7	Farmer's Son. Householder.

PART II.—Persons entitled to vote at Municipal Elections ONLY.

No. on Roll.	Name.	Lot.	Con. or Street.	—
120 42	Heap, Uriah. Phazackerley, H.	12 3	4 7	Tenant. Freeholder.

PART III.—Persons entitled to vote at Elections to the LEGISLATIVE ASSEMBLY ONLY.

No. on Roll.	Name.	Lot.	Con. or Street.	—
17 59 63	Edwards, Arthur. Percival, John ... Richards, Charles	61 19 15	Bloor st. Church st. North st.	Owner. Tenant. Occupant.

POLLING SUB-DIVISION, No. 3, COMPRISING, &c. (Giving the limits.

&c.

&c.

&c.

FORM 2. (Section 5.)

CERTIFICATE TO BE ENDORSED ON VOTERS' LIST.

I, A. B., Clerk of the Municipality of _____, in the County of _____, do hereby certify that parts one and three of the within (or above) list constitute a correct list for the year 18 ____ of all persons appearing by the last Assessment Roll of the said Municipality to be entitled to vote at Elections for Members of the Legislative Assembly; and that parts one and two constitute a correct list for said year, of all persons appearing by the said roll to be entitled to vote at Municipal Elections in said Municipality; and I hereby call upon all electors to examine the said list, and if any omissions or other errors are perceived therein, to take immediate proceedings to have the said errors corrected according to law.

Dated this _____ day of _____

A. B., Clerk of _____

FORM 6. (Section 7.)

CLERK'S NOTICE OF FIRST POSTING OF VOTERS' LIST.

Voters' List, 18 ____.—Municipality of the _____ of _____ County of _____

Notice is hereby given, that I have transmitted or delivered to the persons mentioned in the third and fourth sections of "*The Voters' Lists Act*," the copies required by said section to be so transmitted or delivered, of the list made, pursuant to said Act, of all persons appearing by the last revised Assessment Roll of the said Municipality to be entitled to vote in the said Municipality at Elections for Members of the Legislative Assembly and at Municipal Elections; and that said list was first posted up at my office, at _____ on the _____ day of _____, 18 ____, and remains there for inspection.

Electors are called upon to examine the said list, and, if any omissions or any other errors are found therein, to take immediate proceedings to have the said errors corrected according to law.

Dated, &c.

A. B.,
Clerk of the said Municipality.

FORM 4. (Section 8, Sub-sec. 2.)

VOTER'S NOTICE OF COMPLAINT ON GROUND OF DISQUALIFICATION. (a)

To the Clerk of the Municipality of the Town _____ of _____

(a) This notice should point out in more explicit terms the grounds of the alleged disqualifications. Such as naming the disqualifying office; or stating the corrupt practice charged against the voter. See note (p) page 23 *ante*; and note (e) to s. 2 of *The Voters' Lists Finality Act*, page 56.

I, *Angus Bell*, a voter (or "a person entitled to be a voter") in the said Municipality (or "for the Electoral District in which the Municipality is situated"), complain that the name of *John Jack* is wrongly entered in the Voters' List for the said Municipality, he being a person disqualified under the section of "*The Election Act*:" And take notice, that I intend to apply to the Judge in respect thereof, in pursuance to the statute in that behalf.

Dated the day of 18 .

ANGUS BELL,

Residence—Township of York.

FORM 5. (Section 8, Sub-sec. 3.)

NOTICE AND APPLICATION BY VOTER TO WHOM PERSON
ASSESSED HAS TRANSFERRED PROPERTY.

To the Clerk of the Municipality of the Town of

I, *Luke Doran*, a person entitled to be a voter in the said Municipality, complain that the name of *Peter Short* is wrongly inserted in the Voters' List for the said Municipality, he having before the final revision and correction of the Assessment Roll transferred to me the property in respect to which his name is entered on the said List (or "parted with the property in respect to which his name is entered on the Voters' List, and that I am in possession of the same"): And take notice, that I intend to apply to the Judge to have my name entered on the said List, instead of the said *Peter Short*, pursuant to the provisions of the statute in that behalf.

Dated the day of 18 .

LUKE DORAN.

FORM 5a. (Section 8, Sub-sec. 4.)

NOTICE AND APPLICATION BY A PERSON UNDER THE AGE OF
TWENTY-ONE YEARS.

To the Clerk of the Municipality of the of

I, *F. M.*, hereby apply to have my name entered on the Voters' List (or Assessment Roll and Voters' List, *as the case may be*), for the Municipality of on the ground that I will be of the full age of twenty-one years, on the day of 18 , being within sixty days from the date of the final revision and correction of the Assessment Roll, in respect of the following real property (*describing it*), (or in respect of my

income of \$, as the case may be), pursuant to sub-section 4 of section 8 of the *Voters' List Act*.

Dated this day of 18 .
(Signed by the applicant.)

FORM 5b. (Section 8, sub-sec. 5.)

NOTICE AND APPLICATION OF A FARMER'S SON.

To the Clerk of the Municipality of the of

I, F. A., hereby apply to have my name entered on the Voters' List, (or Voters List and Assessment Roll, as the case may be, for the Municipality of , on the ground that I am a farmer's son entitled to be assessed under the *Assessment Act*, in respect of the following real property (describing it), pursuant to sub-sec. 5 of section 4 of the *Voters' List Act*, and s. 9 of the *Voters' Lists Finality Act*.

Dated the day of , 18
(Signed by applicant.)

FORM 6. (Section 9.)

VOTER'S NOTICE OF COMPLAINT.

To the Clerk of the Municipality of the Town of

I, James Smith, a voter (or "person entitled to be a voter") for the Electoral District of , in which the said Municipality is situated, complain (state the names of the persons in respect to whom complaint is made, and the ground of complaint touching each person respectively—or set forth in lists as follows, varying according to circumstances), that the several persons whose names are set forth in the subjoined list No. 1 are entitled to be voters in the said Municipality, as shewn in said list, but are wrongfully omitted from the Voters' List: That the several persons whose names are mentioned in the first column of the subjoined list No. 2 are wrongfully stated in the said Voters' List, as shewn in said list No. 2: That the several persons whose names are set forth in the first column of the subjoined list No. 3 are wrongfully inserted in the said Voters' List, as shown in list No. 3: And that there are errors in the description of the property in respect to which the names respectively are entered on the Voters' List (or stating other errors), as shown in the subjoined list No. 4: And take notice, that I intend to apply to the Judge in respect thereof, pursuant to the statute in that behalf.

Dated the day of 18 .

JAMES SMITH,
Residence—Township of Beby.

*List of Complaints mentioned in the above Notice of Complaint.**LIST No. 1 (shewing voters wrongfully omitted from the Voters' List.)*

NAMES OF PERSONS.	GROUND ON WHICH THEY ARE ENTITLED TO ON THE VOTERS' LIST.
James Tupper	Tenant to John Fraser, of N. $\frac{1}{4}$ lot 1, 2nd Con.
Simon Beauclerk..	Owner in fee of N. W. $\frac{1}{4}$ lot 6, in 8th Con.
Angus Blain.....	Assessed too low—property worth \$

LIST No. 2 (shewing voters wrongly named in Voters' List.)

NAMES OF PERSONS.	POLLING SUB-DIVISION.	PART OF LIST.	THE ERRORS IN STATEMENT UPON VOTERS' LIST.
Joshua Townsend.	2	1	Should be <i>Joseph</i> Townsend.
John McBean.....	4	1	Should be John McBean <i>the younger</i> .
S. Connell.....	3	2	Should be <i>Simon</i> O'Connell.

LIST No. 3 (shewing persons wrongfully inserted in the Voters' List.)

NAMES OF PERSONS.	POLLING SUB-DIVISION.	PART OF LIST.	STATEMENT WHY WRONGFULLY INSERTED IN VOTERS' LIST.
Peter White.....	4	1	Died before final revision of roll.
John May.....	3	2	Tenancy expired—left country.
David Walters....	2	2	Assessed too high—property worth under \$

LIST No. 4. (shewing voters whose property is erroneously described in Voters' List, &c.)

NAMES OF PERSONS.	POLLING SUB-DIVISION.	PART OF LIST.	ERRORS IN RESPECT TO PROPERTY OR OTHERWISE STATED.
Stephen Washburn	3	2	Name should be in Subdivision No. 2.
Thomas Gordon ...	2	1	Property should be W. $\frac{1}{4}$ lot 7, in 3rd Con.
Ronald Blue.....	4	2	Should be described as owner, not tenant.

FORM 7. (Section 9).

CLERK'S REPORT IN CASE OF APPEALS AND COMPLAINTS TO
THE JUDGE.

To His Honor the Judge of the County Court of the County
of

The Clerk of the Municipality of states and reports that the several persons mentioned in column 1 of the Schedule below, and no others, have each given to him (or "left for him at his residence or place of abode," as the fact may be) written notice complaining of errors or omissions in the Voters' List for the said Municipality for 18 , on the grounds mentioned in column 2 of the said Schedule, and that such notices were received respectively at dates set down in column 3 of the said Schedule.

Dated, &c.

A. B.

Clerk of said Municipality.

Schedule.

1	2	3
NAME OF COMPLAINANTS	ERRORS OR OMISSIONS COMPLAINED OF.	DATE WHEN NOTICE OF COM- PLAINT RECEIVED BY CLERK

FORM 8. (Section 9.)

JUDGE'S ORDER APPOINTING COURT FOR HEARING COMPLAINTS
AND APPEALS.

To , Clerk of the Municipality of the

Upon reading your report and notification respecting the Voters' List for the said Municipality for 18 , pursuant to the statute in that behalf, I appoint the of 18 , at the hour of at in the said County, for holding a Court to hear and determine the several complaints of errors and omissions in the said Voters' List, of which due notice has been given.

You are constituted Clerk of the Court.

You will advertise the holding of such Court, and post up in your office or the place in which the Council hold their sittings, a list of all complaints of errors and omissions in the

said Voters' List, and you will notify all parties concerned according to law.

Let the Assessor for the Municipality attend the sittings of the said Court, and let the original Assessment Roll of the Municipality for 18 , and the minutes of the Court of Revision for the Municipality for 18 , be produced before me or the acting Judge, on the day and at the place above mentioned.

Dated day of 18 .

Judge Co. Court, County of

FORM 9. (Section 9.)

NOTICE TO BE POSTED BY CLERK IN HIS OFFICE WITH LIST OF COMPLAINTS.

Notice is hereby given, that a Court will be held, pursuant to "*The Voters' Lists Act*," at , on the day of 18 , at o'clock, for the purpose of hearing all complaints made against the Voters' List for the Municipality of for 18 , particulars of which complaints are shewn in the subjoined Schedule.

All persons having business at the Court are hereby required to attend at the said time and place.

Dated, &c.

A. B.,
Clerk of the said Municipality.

Schedule.

NAME OF PARTY COM- PLAINING.	NAME OF PERSON IN RESPECT TO WHOM APPEAL WAS MADE.	GROUND OF COM- PLAINT ALLEGED.

FORM 10. (Section 9.)

CLERK'S ADVERTISEMENT OF COURT IN NEWSPAPER.

Notice is hereby given, that a Court will be held, pursuant to "*The Voters' Lists Act*," by His Honour the Judge of the County Court of , at , on the

day of _____, 18____, at _____ o'clock, to hear and determine the several complaints of errors and omissions in the Voters' List of the Municipality of _____ for 18____.

All persons having business at the Court are required to attend at the said time and place.

Dated, &c.

A. B.

Clerk of the said Municipality.

FORM 11. (Section 9.)

CLERK'S NOTICE TO PARTY COMPLAINING.

The Voters' List Act.

You are hereby notified that, pursuant to the Statute in that behalf, a Court for the Revision of the Voters' List, 18____, for the Municipality of _____, will be held by the Judge (or acting Judge) of the County Court of the County of _____, at _____, on the _____ day of 18____, at _____ o'clock, at which Court all complaints duly lodged of any error or omission in the said List will be heard and determined. A list of said complaints is posted up in _____, and you are hereby required to be and appear at such Court; and take notice, that the Judge may proceed to hear and determine the complaints, whether the parties complaining appear or not.

By order of His Honour the Judge of the County Court of the County of _____

Dated _____ day of _____ 187 .

A. B.,

*Clerk of the Municipality of _____, and
constituted Clerk of said Court.*

To

A person complaining of error }
in the said Voters' List. }

FORM 12. (Section 9.)

CLERK'S NOTICE TO PARTY COMPLAINED AGAINST.

"The Voters' Lists Act."

You are hereby notified that, pursuant to the Statute in that behalf, a Court for the Revision of the Voters' List, 18____,

for the Municipality of _____, will be held by the Judge
(or acting Judge) of the County Court of the County of _____
, at _____ o'clock, and you are required to
appear at the said Court, for that _____ has com-
plained that your name _____ is wrongly inserted
in the said Voters' List ("because," &c., *state matter of com-
plaint concisely*). A list of all complaints lodged, is posted up
in _____; and take notice, that the Judge may
proceed to hear and determine the said complaint, whether
you appear or not.

By order of his Honour the Judge of the County Court of
the County of _____

A. B.,
*Clerk of the said Municipality, and constituted
Clerk of the said Court.*

To

Entered on said Voters' List.

FORM 13.] (Section 10.)

SUBPENA.

ONTARIO :
County of _____
To Wit.

} VICTORIA, by the Grace of God, of
the United Kingdom of Great
Britain and Ireland, Queen, De-
fender of the Faith.

To

Greeting :

We command you, that, all excuses being laid aside, you be
and appear in your proper person before our Judge of our
County Court of the County of _____, at _____
, on the _____ day of _____, 18 _____,
at _____ o'clock in the _____ noon, at a Court appointed
and there and then to be held, for hearing complaints of errors
in the Voters' List for 18 _____, of the Municipality of the
of _____, in the County of _____, and for revi-
sion of the said Voters' List, _____ then and there
to testify to all and singular those things which you know in a
certain matter (or matters) of complain made and now depend-
ing before the said Judge, under "*The Voters' Lists Act*,"
wherein one _____ is complainant, and which complaint
is to be tried at the said Court. Herein fail not.

Witness, His Honour , Judge of our said Court
 at the day of , in the year of
 our Lord one thousand eight hundred and
 A. B., Clerk.

FORM 14. (Section 11).

REPORT OF CLERK WHEN APPLYING FOR CERTIFICATE UNDER
SECTION 11.

To the Judge of the County Court of the County of .

I, , Clerk of the Municipality of ,
 in the said County of , do hereby certify as follows:

That I did, on the day of , 18 ,
 post up, and for a period of thirty days next thereafter keep
 posted up, in a conspicuous place in my office at
 a true and correct printed copy of the Voters' List for the
 Municipality of , for 18 , made in pursuance of
 "The Voters' Lists Act," with the certificate required by section
 five of the said Act endorsed thereon.

That I did also duly deliver and transmit by post, by registered letter (or, "by parcel post registered," or, "by book post") the required number of similar printed copies of the said Voters' List, with my certificate endorsed, to each, and all of the persons entitled to the same under sections three and four of this Act.

That I did on the day of , 18 ,
 cause to be inserted in the newspaper called the " ,"
 published in , the notice required by section seven
 of the said Act.

That no person gave me nor did I receive any written notice of complaint and intention to apply to the Judge or Junior or acting Judge of the County Court of said County of in respect to the said Voters' List, within thirty days after I, the said Clerk, had posted up the said List in my office, as directed by the provisions of the said Act.

And that to the best of my knowledge and belief, I have complied with the several requirements of the said Act, so as to entitle me to apply for certified copies under the eleventh section of the said Act; and I do hereby, in pursuance thereof, now apply to you the said Judge to certify three of the

copies of the said List received by you as being the Revised List of Voters for the Municipality of the said of for the year of our Lord, 18 .

Witness my hand this day of 18 .

_____,
Clerk of the Municipality of

_____, P. O.

FORM 15. (Section 11.)

JUDGE'S CERTIFICATE OF NO COMPLAINTS.

County of _____

A. B., Clerk of the Municipality of the of , having certified under his hand that no complaint respecting the List of Voters for said Municipality, for the year 18 , had been received by him within thirty days after the first posting up of the same ; and on application of the Clerk,

I, , Judge of the County Court of the County of , in pursuance of the provisions of "*The Voters' Lists Act*," certify that the annexed printed List of Voters, being one of the copies received by me from the said Clerk, under section three of the said Act, is the Revised List of Voters for the said Municipality for the year 18 .

Given under my hand and seal, at , this day of , 18 .

_____, Judge.

FORM 16. (Section 12.)

STATEMENT OF ALTERATIONS BY JUDGE.

Be it remembered, that upon a final revision and correction of the List of Voters of the Municipality of the of for the year 18 , pursuant to the provisions of "*The Voters' Lists Act*," the following changes were duly made by me in the copies of the said list received by me from the Clerk of the said Municipality, viz. :

1. The following persons are added to the said List :—

NAME.	POLLING SUB-DIVISION.	PART OF LIST.	PROPERTY.

2. The following persons are struck off the said List :—

NAME.	POLLING SUB-DIVISION.	PART OF LIST.	PROPERTY.

3. The following changes are made in the property described opposite to the names of voters otherwise correctly inserted :—

NAME.	POLLING SUB-DIVISION.	PART OF LIST.	PROPR'Y AS ORIGINAL'Y DESCRIBED ON LIST.	PROPR'Y AS ALTERED.

4. The following changes are made in the names of voters incorrectly named :—

NAME ORIGINALLY ON LIST.	POLLING SUB-DIVISION.	PART OF LIST.	NAME AS ALTERED.	PROPERTY.

Witness my hand this

day of

A.D., 18 .

County Judge, County of

FORM 17. (Section 12).

CERTIFICATE OF JUDGE.

I, _____, Judge of the County Court of the County of _____, pursuant to the twelfth section of "*The Voters' Lists Act*," do hereby certify that the above (as the case may be) is a corrected copy of the List of Voters, for the year 18____, received by me from the Clerk of the Municipality of the _____ of _____, according to my revision and correction thereof, pursuant to the provisions of the said Act.

Dated at _____, this _____ day of _____, 18____.

_____, Judge.

FORM 18. (Section 20).

ORDER FOR PAYMENT OF COSTS.

"*The Voters' Lists Act*."

In the matter of the Voters' List for the Municipality of _____, 18____, and of the complaint and appeal to the Judge of the County Court of the County of _____, by A. B., complaining of the name of C. D. being wrongly inserted in the said List (or, as the case may be, stating in brief the nature of the complaint).

On proceedings taken before me, pursuant to the said Act, I find and adjudge that the name of the said C. D. was rightly inserted in the said List (or "was wrongly inserted in the said List"), and order that the said A. B. do pay the said C. D. his costs occasioned by the said complaint (or, "and order that the said C. D. shall pay the said A. B. his costs incident to the said complaint,"—or, "and order that E. F., the Assessor of the said Municipality, being blamable for such wrong insertion, do pay the said A. B. his costs incident to the said complaint,"—or, as the order may be, stating it in brief), said costs to be taxed pursuant to the said Act.

Dated at _____, this _____ day of _____, 18____.

_____, Judge.

Schedule 2.

Column 1.	Column 2.	Column 3.
Names of persons not sufficiently assessed on the Assessment Roll for Municipality of for the year 18 .	Amount for which the parties should be assessed in addition to the amount already on the Assessment Roll.	Property in respect to which the liability to assessment exists.

FORM 21. (Section 24).

APPLICATION TO JUDGE AGAINST DELINQUENT CLERK.

Pursuant to the twenty-fourth section of "The Voters' Lists Act," I, A. B., Clerk of the Peace for the County of (or, "a person entitled to be named as an elector on the Voters List for the Municipality of , for 18 ,") hereby inform His Honour the Judge of the County Court of the said County, that C. D., Clerk of the Municipality of , in the said County, has failed to perform the duties required of him as such Clerk by the said Act, in this, that he the said C. D. has not made out the Alphabetical List of Voters for 18 , for the said Municipality, within thirty days after the final revision and correction of the Assessment Roll thereof (or, "has not delivered or transmitted printed copies of the Voters' List for the said Municipality, for 18 . to and and or to any of them" or, as the case may be, stating in brief, the duty not performed), according to the requirements of the said Act; and I apply to you the said Judge to enforce the performance of the duties aforesaid, and to take such other proceeding as may be necessary.

Dated at , this day of 18 .

A. B., Clerk of the Peace.

FORM 22. (Section 24, Sub-sec. 3.)

SUMMONS.

"The Voters' Lists Act."

In the matter of the Voters' List for the Municipality of
in the County of , for 18 .

Whereas it appears by the application of A. B., the Clerk of the Peace for the said County (or "a person titled to be named as an elector on the said list") to me in pursuance of the said Act, that you, C. D., Clerk of the said Municipality, have failed to perform certain duties required of you by the said Act, in this, that you have not made out the Alphabetical List of Voters for 18 , for the said Municipality, within thirty days after the final revision and correction of the Assessment Roll thereof (*or, as the case may be, following the application*); and whereas the said A. B. has applied to me to enforce the performance of the duties aforesaid;

You, the said C. D., are therefore hereby required to be and appear before me at my Chambers, in
on the day of , 18 , at the hour of , and then and there have with you and produce the Assessment Roll for 18 , for the said Municipality, and any documents in your custody, power or control, relating to the Assessment Roll, or to the Voters' List aforesaid; and then and there submit yourself for the examinations on oath as may be required of you. Herein fail not at your peril.

Dated this day of 18 .

To C. D., Clerk of the Municipality of

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